



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 11, 2004

Ms. Lisa M. Mims  
General Counsel  
Texas Board of Professional Geoscientists  
P.O. Box 13225  
Austin, Texas 78711

OR2004-6810

Dear Ms. Mims:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206895.

The Texas Board of Professional Geoscientists (the "board") received a request for a copy of a letter sent to the Attorney General's office requesting an opinion and a copy of the "[Attorney General's] letter/opinion." You have not submitted any information pertaining to the "[Attorney General's] letter/opinion." As you have not submitted this information, we assume the board has released it to the extent that it existed on the date the board received this request. If the board has not released any such records, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). Ordinarily, we consider a governmental body's communications to this office, stating why requested information should be withheld from public disclosure, to be available to the public, except to the extent that the governmental body's brief contains or otherwise reveals the information sought to be withheld. *See* Open Records Decision Nos. 508 (1988), 459 (1987). You claim, however, that this information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the information you submitted.

We first note that you also initially raised sections 552.107 and 552.111 of the Government Code. However, as you did not submit to this office written comments stating the reasons why sections 552.107 and 552.111 would allow the submitted information to be withheld,

we find that you have waived those exceptions. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision Nos. 630 at 4- 5 (1994) (governmental body may waive statutory predecessor to section 552.107); 473 (1987) (governmental body may waive section 552.111).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential. Section 1002.260 of the Occupations Code provides:

A statement made by a person who provides a reference for an applicant for a license under this chapter or provides any information compiled by or submitted to the board relating to an applicant is privileged and confidential and may be used only by the board or an employee or agent of the board who is directly involved in the application or licensure process. Confidential information under this section is not subject to discovery, subpoena, or other disclosure in any proceeding.

Occ. Code § 1002.260. This section makes confidential information that the board obtains in the application or licensure process but does not extend such confidentiality to information pertaining to complaints that the board receives regarding an individual who has already been licensed. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public).

The information you seek to withhold consists of a legal brief which was sent to this office in connection with a prior request for a ruling. You state that this brief "has references to letters of reference, e-mails about the applicant, complaint forms, complaint letters, and the circumstances in which those documents were given to the Board." We note, however, that because this legal brief was created by the board in response to a request for public information, it cannot be said to have been information obtained by the board in the application or licensure process. Nor was this document "compiled by or submitted to the board relating to an applicant." *See* Occ. Code § 1002.260. Furthermore, the brief itself is general in nature and does not reveal any specific information compiled by or submitted to the board relating to an applicant. Accordingly, the submitted information is not confidential under section 552.101 in conjunction with section 1002.260 of the Occupations Code. Because you raise no other exception to disclosure, the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long horizontal flourish extending to the right.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/sdk

Ref: ID# 206895

Enc. Submitted documents

c: Ms. Ada Lichaa  
1821 Westlake Drive, #121  
Austin, Texas 78746  
(w/o enclosures)