



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2004

Mr. Paul D. Cook
Assistant Executive Director
Texas Board of Professional Engineers
1917 IH-35 South
Austin, Texas 78741

OR2004-8503

Dear Mr. Cook:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210475.

The Texas Board of Professional Engineers (the "board") received a request for the requestor's file, including reference material. You indicate that some information has been released but claim that the submitted reference material is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. You contend that portions of the submitted information are confidential under the section 1001.212 of the Occupations Code, which provides as follows:

- (a) A statement made by a person providing a reference for an applicant and other pertinent information compiled by or submitted to the Board relating to an applicant for licensure under this Act is privileged and confidential.
- (b) Information described in Subsection (a) may be used only by the board or its employees or agents who are directly involved in the application or licensure process. The information is not subject to discovery, subpoena, or other disclosure.

Occ. Code § 1001.212. You contend that the highlighted information in Exhibits 2 and 5 and the reference documents submitted as Exhibits 3 and 4 consist of information compiled by the board relating to an applicant for licensure. Based on your representations and our review of the submitted information, we agree that the information at issue is confidential under section 1001.212 of the Occupations Code. Accordingly, we conclude that the board must withhold this information pursuant to section 552.101 of the Government Code as information made confidential by law. The remainder of the submitted information must be released to the requestor.

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 cursive script that reads "Amy Peterson". The signature is written in black ink and includes a long, sweeping flourish at the end.

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 210475

Enc. Submitted documents

c: Mr. Michael L. Isley, P.E.
17002 Driver Lane
Sugar Land, Texas 77478
(w/o enclosures)