ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2005

Mr. Dale Beebe Farrow
Executive Director
Texas Board of Professional Engineers
1917 IH-35 South
Austin, Texas 78741

OR2005-07763

Dear Mr. Farrow:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 231243.

The Texas Board of Professional Engineers (the "board") received a request for a copy of a complaint filed against a named registered engineer. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[1]

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 protected by other statutes. Section 1001.252 of the Occupations Code provides:

> (a) The board shall adopt rules that permit the board to receive and investigate a confidential complaint against a license holder or other person

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

> who may have violated this chapter. The board shall maintain the confidentiality of the complaint during the investigation.

Occ. Code § 1001.252(a). You inform us that the board has promulgated board rule 139.11, which provides:

> (a) The Board shall initiate or receive and investigate a complaint against a license holder or other person who may have violated the Act or Board rules.
>
> (b) The Board shall maintain the confidentiality of the complaint from receipt through the investigation of the complaint. The complaint information will no longer be confidential after formal charges are filed or after the investigation is closed.

22 T.A.C. § 139.11(a), (b). Both section 1001.252(a) of the Occupations Code and board rule 139.11 require the board to maintain the confidentiality of complaint information during the investigation of the complaint. You state that the requested information relates to a pending investigative matter against a license holder. Based on your representations, and our review of the information at issue, we agree that the board must withhold the requested information from disclosure under section 552.101 of the Government Code in conjunction with section 1001.252(a) of the Occupations Code. We note that complaint information is no longer confidential once formal charges have been filed or once the investigation is closed.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

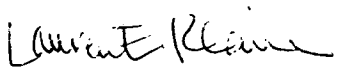
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *Tex. 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/krl

Ref: ID# 231243

Enc. Submitted documents

c: Mr. J. Frank Onion III
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(w/o enclosures)