



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 29, 2005

Mr. Robert Simpson  
Assistant General Counsel  
Texas State Board of Medical Examiners  
P.O. Box 2018  
Austin, Texas 78768-2018

OR2005-08859

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 233322.

The Texas State Board of Medical Examiners (the "Board") received a request for all records pertaining to a certain physician who has applied for licensure in Texas to include her application for a Texas license. You state that the Board has provided the requestor a copy of the public verification/physician profile information, including any disciplinary action, and other information the Board believes is not excepted from required public disclosure.<sup>1</sup> You claim that certain additional information responsive to this request and which you submitted to this office for our review is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also reviewed the comments of the physician whose information was requested. *See* Gov't Code § 552.304.

Section 552.101 excepts from required public disclosure information made confidential by law including information made confidential by statute. You assert the submitted

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<sup>1</sup>Although the physician of interest here is apparently not licensed in Texas, we note that the Texas Medical Practice Act requires the board to make public certain information concerning physicians licensed in this state. *See* Occ. Code §§ 154.004 (requiring board to make public on request summary of any previous disciplinary board order against specific physician licensed in Texas), .006 (requiring board's compilation of physician profiles in format easily available to the public).

information is deemed confidential by section 164.007(c) of the Occupations Code, which reads as follows:

(c) Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). You assert that this provision applies to the complaint investigation file as well as the entire license application file. You explain that section 154.056 of the Occupations Code requires the Board to investigate complaints. You also explain that section 155.003(d) of the Occupations Code authorizes the Board to investigate applicants for licensure to determine that the applicant is eligible to be licensed. *See id.* § 155.003(d); *see also id.* § 164.001 (setting out circumstances under which Board may refuse to admit person to its examination or to issue or renew a license). You inform us that the submitted files consist of investigative information relating to an application for license that was received or gathered by the Board. We conclude that the submitted complaint investigation file and portions of the license application file are confidential under section 164.007(c) and, consequently, excepted from required disclosure under section 552.101 of the Government Code. We further conclude that portions of the license application file, specifically, the information in Tab D, are not confidential under section 164.007(c). Consequently, the information in Tab D is subject to disclosure and must be released to the requestor with the exception of the applicant's social security number, which is excepted from disclosure under the provision to be codified as section 552.147 of the Government Code, *see* Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147), and the applicant's e-mail address, which is excepted from disclosure under section 552.137 of the Government Code.<sup>2</sup> We have marked the information in Tab D accordingly.

You also request that this office issue a previous determination allowing the Board in the future to withhold without seeking a ruling from this office requested investigative

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<sup>2</sup>Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials.

information gathered during a disciplinary investigation or a licensure investigation under section 552.101 in conjunction with section 164.007(c). We decline to issue a previous determination at this time. Accordingly, 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); *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 Office of the Attorney General 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. 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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/seg

Ref: ID# 233322

Enc: Submitted documents

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