

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2005

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

OR2005-10046

Dear Mr. Simpson:

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# 235746.

The Texas State Board of Medical Examiners (the "board") received a request for all information pertaining to a named licensee.¹ You state that you have released some of the requested information, but claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The board did not submit a copy or representative sample of the requested information.

¹As you have not submitted the request for information, we take our description from your brief.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.101 can provide a compelling reason to overcome the presumption of openness; however, because you have not submitted the requested information for our review, we have no basis to find that section 552.101 is applicable to the requested information. Thus, we have no choice but to order you to release the requested information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

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).

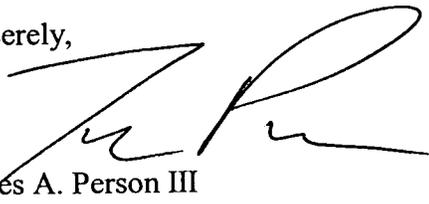
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 235746

c: Mr. Jean Robb Hubert
c/o Robert Simpson
Texas State Board of Medical Examiners
P.O. Box 2018
Austin, Texas 78768

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At 9:134 M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. GV505206

TEXAS MEDICAL BOARD,
Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL
OF THE STATE OF TEXAS,
Defendant.

§ IN THE DISTRICT COURT OF
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§ 201st JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, Plaintiff Texas Medical Board (Board) and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552, by which Plaintiff seeks relief from compliance with Letter Rulings OR2005-10046 and OR2005-10574. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestors, Jean Robb Hubert and Joel T. Gomez, respectively, were sent reasonable notice of this setting and of the parties' agreement that the Board must withhold the information at issue; that the requestors were also informed of their right to intervene in the suit to contest the withholding of this information; and that neither requestor has informed the parties of his intention to intervene. Neither has either requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, specifically, investigative information in the possession of or received or gathered by the Board or its employees or agents relating to an application for license for Thomas Lane Dykes, M.D., that was ordered released by the Attorney General in the underlying letter ruling, is confidential under Tex. Occ. Code § 164.007(c) and therefore excepted from disclosure by Tex. Gov't Code § 552.101;

2. The information at issue, specifically, investigative information in the possession of or received or gathered by the Board or its employees or agents relating to an application for license for Allan Scott Clark, M.D., that was ordered released by the Attorney General in the underlying letter ruling, is confidential under Tex. Occ. Code § 164.007(c) and therefore excepted from disclosure by Tex. Gov't Code § 552.101;

3. The Board shall withhold from the requestors the information at issue described in Paragraphs 1 and 2 of this Agreed Final Judgment;

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 21 day of November, 2006.



PRESIDING JUDGE

APPROVED:

L Ginn

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