



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2005

Mr. Dan Meador
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

OR2005-10449A

Dear Mr. Meador:

This office issued Open Records Letter No. 2005-10449 (2005) on November 18, 2005. We have examined this ruling and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on November 18, 2005. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act"))).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 236613.

The Texas Department of State Health Services (the "department") received a request for complaints filed against a named social worker. 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 information.

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 confidentiality provisions such as section 505.2545 of the Occupations Code. Section 505.2545 pertains to information subpoenaed or compiled by the Texas State Board of Social Worker Examiners (the "board") and provides in pertinent part as follows:

(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license or order of recognition;
- (2) social work licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the board against a holder of a license or order of recognition, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with [the Act].

Occ. Code § 505.2545(h), (i). You indicate, and the documents at issue reflect, that the submitted information was compiled by the board, which is a part of the department's Professional Licensing and Certification Unit, in connection with the board's investigation of the named social worker. You further state that the department believes that none of the exceptions to confidentiality under section 505.2545(h) are applicable in this instance. On the basis of your representations and our review of the submitted information, we conclude that the submitted information is made confidential in its entirety pursuant to section 505.2545(h) of the Occupations Code. The department must therefore withhold the submitted information pursuant to section 552.101 of the Government Code. However, if the department has filed formal charges against this person, the nature of those charges, disciplinary proceedings of the board, and any final disciplinary actions are not confidential and must be released to the requestor. *See id.* § 505.2545(i).

You also ask this office to issue a previous determination permitting the department to withhold information subject to section 505.2545(h) of the Occupations Code without the necessity of requesting a decision from this office. *See Gov't Code* § 552.301(a) (allowing

governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) for information held by the department that is made confidential under section 505.2545(h) of the Occupations Code and must be withheld under section 552.101 of the Government Code on that basis. We note that you may only withhold this type of information when none of the exceptions to confidentiality under section 505.2545(h) apply. Furthermore, in accordance with section 505.2545(i) of the Occupations Code, the department may not withhold the nature of any charges filed, disciplinary proceedings of the board, or any final disciplinary actions. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. See Open Records Decision 673 at 7 (2001).

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 ten 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 236613

c: Mr. Rick Kennedy
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