



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 7, 2006

Mr. Robert D. Simpson  
Assistant General Counsel  
Texas Medical Board  
MC-251, P. O. Box 2018  
Austin, Texas 78768-2018

OR2006-03487

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# 245740.

The Texas Medical Board (the "board") received a request for all files pertaining to a named physician. You state that the board has provided the requestor with 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. You claim that the submitted 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.<sup>1</sup>

The information you have submitted consists solely of the licensure investigative file of the named physician. We note that the board currently has a lawsuit pending against the Office of the Attorney General, *Texas State Board of Medical Examiners v. Abbott*, Cause No. GV505206, 201st District Court of Travis County, Texas. The submitted licensure

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<sup>1</sup>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.

investigative file contains the same type of information that is at issue in the pending litigation, and the board's claims with respect to this information correspond to its arguments in the litigation. Accordingly, this decision does not address your claims with regard to the submitted information. We will allow the trial court to determine whether any of the submitted information must be released to this 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, 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,

A handwritten signature in black ink that reads "Candice M. De La Garza". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Candice M. De La Garza  
Assistant Attorney General  
Open Records Division

CMD/krl

Ref: ID# 245740

Enc. Submitted documents

c: Ms. Margaret A. Harris  
Butler & Harris  
1007 Heights Blvd.  
Houston, Texas 77008  
(w/o enclosures)