



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 26, 2007

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

OR2007-03288

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# 274533.

The Texas Medical Board (the "board") received a request for records maintained by the board regarding a named physician. You state that the board has provided the requestor with a copy of the public verification and physician profile information for the named physician, including any disciplinary actions, and other information that the board does not believe is excepted from required public disclosure.<sup>1</sup> You further state the board is withholding responsive information pursuant to a previous determination issued by our office in Open Records Letter No. 2006-14168 (2006).<sup>2</sup> However, you claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We

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<sup>1</sup>We note that the Texas Medical Practice Act, subtitle B of title 3 of the Occupations Code, 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).

<sup>2</sup>Open Records Letter No. 2006-14198 authorizes the board to withhold investigatory records pertaining to licensing investigations of an applicant for a license as a physician under section 552.101 of the Government Code in conjunction with section 164.007 of the Occupations Code without the necessity of requesting an attorney general decision under section 552.301 of the Act. *See* Gov't Code § 552.301(a), (f); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a)).

have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the named physician. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

This office recently issued Open Records Letter No. 2007-03117(2007), which serves as a previous determination under section 552.301(a) of the Government Code for the board with respect to investigative information that is in the possession of or was received or gathered by the board during the investigation of a license holder. Therefore, pursuant to that previous determination, the board may withhold the submitted information under section 552.101 of the Government Code in conjunction with section 164.007 of the Occupations Code. *See* Open Records Decision No. 673.

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,



Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/krl

Ref: ID# 274533

Enc. Submitted documents

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