



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2007

Mr. C. David Richards, III  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756

OR2007-10757

Dear Mr. Richards:

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# 286956.

The Texas Department of State Health Services (the "department") received a request for the files of an individual who is a dually-licensed social worker and sex offender treatment provider. You state that the department is withholding some information under section 505.2545(h) of the Occupations Code pursuant to a previous determination issued to the department in Open Records Letter No. 2005-10449A (2005). *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to a previous determination). You state that you have released a portion of the remaining information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records ruling from this office. If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302);

Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because sections 552.101, 552.130, and 552.137 of the Government Code can provide compelling reasons to withhold information, we will consider your arguments.

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 section 110.256 of the Occupations Code, which provides in pertinent part:

(a) Except as provided by Subsection (b), all information and materials subpoenaed or compiled by the [Council on Sex Offender Treatment (the “council”)] 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 council or its employees or agents involved in the complaint and investigation.

(b) The information described by Subsection (a) may be disclosed to:

- (1) persons involved with the council in a complaint and investigation;
- (2) professional sex offender treatment provider licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the [Texas Board of Health] under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information is deleted.

(c) The filing of formal charges by the council against a person under this chapter, the nature of those charges, the council’s disciplinary proceedings, and final disciplinary actions, including warnings and reprimands, by the council are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Occ. Code § 110.256(a)-(c). You indicate, and the submitted information reflects, that it was compiled by the council, a division of the department, in connection with the council’s investigation of a complaint against the named licensed sex offender treatment provider. You also state that none of the exceptions to confidentiality under section 110.256(b) 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 confidential in its entirety pursuant to section 110.256(a) of the Occupations Code. Therefore, the department must withhold the submitted information under section 552.101 in conjunction with section 110.256(a) of the Occupations Code.<sup>1</sup> 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.* § 110.256(c).

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); *Tex. 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,

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 cursive script that reads "Nikki Hopkins". The signature is written in black ink and is positioned above the typed name.

Nikki Hopkins  
Assistant Attorney General  
Open Records Division

NRH/mcf

Ref: ID# 286956

Enc. Submitted documents

c: Mr. Robert A. Johnston  
251 Pin Oak Drive  
Brenham, Texas 77833  
(w/o enclosures)