



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2007

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

OR2007-16596

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# 297624.

The Texas Medical Board (the "board") received a request for all information relating to a named physician. You state that the board has released public verification and physician profile information, together with any disciplinary action and other information that the board does not believe is excepted from public disclosure under the Act.<sup>1</sup> You state that you are withholding some of the remaining requested information pursuant to the previous determinations issued by our office in Open Records Letter Nos. 2006-14198 (2006) and 2007-03117 (2007). *See* Gov't Code § 552.301(a) (governmental body may withhold information subject to previous determination); Open Records Decision No. 673 (2001). You claim that the remaining requested information is excepted from disclosure under

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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), 154.006 (requiring board's compilation of physician profiles in format easily available to the public).

section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.101 of the Government Code 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 information protected by other statutes. Section 164.007(c) of the Occupations Code provides as follows:

Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). You inform us that the remaining requested information consists of the compliance investigation file of the named physician. *See id.* § 164.010 (board monitoring of license holder subject to disciplinary action). After review of your arguments and the information at issue, we find that some of the information, which we have marked, includes information relating to the identity of, or a report made by, a physician performing or supervising compliance monitoring for the board. Thus, we agree that the information we have marked is confidential under section 164.007(c) and must be withheld under section 552.101 on that basis. We conclude, however, that you have failed to establish that the remaining information consists of a complaint, adverse report, investigation file, other investigation report, or other investigative information for purposes of section 164.007(c). We further find that the remaining information does not include information relating to the identity of, or a report made by, a physician performing or supervising compliance monitoring for the board. Therefore, the remaining information is not confidential under section 164.007 of the Occupations Code, and the board may not withhold it under section 552.101 of the Government Code on that ground.

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<sup>2</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.

We note that the remaining information includes an e-mail address that is subject to section 552.137 of the Government Code.<sup>3</sup> Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address in the remaining information is not a type specifically excluded by section 552.137(c). As such, this e-mail address must be withheld under section 552.137 unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

In summary, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 164.007(c) of the Occupations Code, and the information we have marked under section 552.137 of the Government Code. The remaining information must be released.

Although you request a previous determination to withhold compliance information under section 552.101 of the Government Code in conjunction with section 164.007(c) of the Government Code, we decline to issue one at this time. Accordingly, 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

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<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

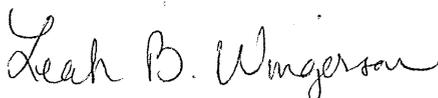
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 297624

Enc. Submitted documents

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(w/o enclosures)