



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2008

Mr. Dan Meador
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2008-08218

Dear Mr. Meador:

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# 312912.

The Department of State Health Services (the "department") received a request for all complaints filed against a named orthotics and prosthetics provider. You inform us that the department has released or will release some of the requested information. 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 information.

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. Section 552.101 encompasses chapter 605 of the Occupations Code. This chapter provides for the investigation of complaints filed with the Texas Board of Orthotics and Prosthetics by the Commissioner of Public Health, which we understand are both part of the department. Section 605.2021 provides in relevant part the following:

(h) All information and materials subpoenaed or compiled by the [Texas Board of Orthotics and Prosthetics] 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 [Texas Board of Orthotics and Prosthetics] in a disciplinary action against the holder of a license;
- (2) professional orthotist or prosthetist 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 [Texas Board of Orthotics and Prosthetics] against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the [Texas Board of Orthotics and Prosthetics] are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Occ. Code § 605.2021(h), (i). You state that the submitted information was gathered or created in response to a complaint and an investigation occurred. You also state that the exceptions to confidentiality under section 605.2021(h) are not applicable, and you do not indicate that the submitted information is subject to release under section 605.2021(i). Based on your representations and our review, we agree you have established that the submitted information was subpoenaed or compiled by the Texas Board of Orthotics and Prosthetics in connection with a complaint and investigation. Therefore, we find that the submitted information is confidential under section 605.2021 of the Occupations Code and must be withheld under section 552.101 of the Government Code.

You also ask this office to issue a previous determination permitting the department to withhold all complaint and investigative documents involving any licensed or formerly licensed orthotics or prosthetics provider, compiled by the department on or after September 1, 1999 pursuant to section 605.2021(h) of the Occupations Code, without the necessity of requesting a ruling from our office under the Act. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a previous determination at this time. Rather, 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 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,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 312912

Enc. Submitted documents

c: Mr. David Gagnon
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(w/o enclosures)