



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2008

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

OR2008-16476

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# 328009.

The Texas Medical Board (the "board") received a request for all executed affidavits and oaths of four named individuals. You claim the requested information is excepted from disclosure pursuant to a previous determination issued by this office in Open Records Letter No. 2006-14198 (2006). Alternatively, you claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the board's arguments and reviewed the submitted information. We have also considered comments submitted by the doctors at issue. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The board claims the submitted information is subject to the previous determination issued by this office in Open Records Letter No. 2006-14198. In that ruling, this office construed section 164.007(c) of the Occupations Code. Section 164.007(c) states "each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board [. . .] relating to a license holder, an application for license, or criminal investigation or proceedings is privileged and confidential[.]" Occ. Code § 164.007(c). We concluded section 164.007(c) makes confidential investigatory records compiled by the board as part of its investigation

of an application for license as a physician. *See* ORL 2006-14198. The requestor argues, however, that the previous determination is not applicable because the requested oaths are associated with "faculty medical license[s]" and the previous determination is only applicable to documents submitted by those seeking medical licenses. The board argues section 164.007(c) makes no distinction between types of licenses but makes confidential all investigative information relating to an application for a full medical license or any temporary license issued by the board. The board informs us faculty licenses, to which the requestor refers, are temporary licenses to practice medicine issued to a physician appointed by a medical school under section 172.8 of chapter 22 of the Texas Administrative Code. *See also* Occ. Code § 155.104. Section 172.8(a)(5) requires a physician applying for a faculty temporary license to sign an oath swearing to abide by board rules and the Medical Practices Act and subjecting the physician to the disciplinary procedures of the board. *See* 22 T.A.C. § 172.8(a)(5). The board explains the oaths at issue are the type required by section 172.8. The board also informs us that the oaths are gathered as part of the board's investigation in considering an application for licensure and are kept as part of an applicant's file. Subchapter A of chapter 164 does not provide an exhaustive definition of investigative information. *See e.g.* Occ. Code § 164.007(c) (investigative information includes information relating to identity of, and report made by, physician performing or supervising compliance monitoring for the board). Based on your representations and our review, we find that the submitted oaths are part of the investigative information gathered or received by the board relating to applications for licensure. We also find that none of the release provisions in section 164.007 apply in this instance. *See id.* § 164.007(f)-(h). Accordingly, the submitted oaths are confidential under section 164.007(c) and must be withheld under section 552.101.

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). If the governmental body does not file suit over 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 328009

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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