



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

This ruling has been modified by court action  
The ruling and judgment can be viewed in PDF  
format below.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2009

Ms. Nancy Leshikar  
General Counsel  
Texas Medical Board  
MC-251 P.O. Box 2018  
Austin, Texas 78768-2018

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

OR2009-10000

Dear Ms. Leshikar:

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# 354223 (TMB Reference No. 18870).

The Texas Medical Board (the "board") received a request for the names, addresses, dates of birth, and employer/employment address of all employees of the board. You state that most of the requested information has been released. You seek to withhold employees' birth dates. We have considered your arguments and reviewed the information you submitted.

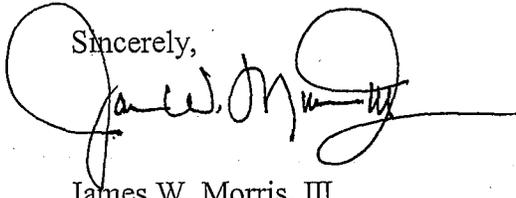
You inform us that the requested birth dates were collected on Equal Employment Opportunity ("EEO") Data Forms. You explain that completion of the EEO Data Form is optional, that the information is collected for EEO reporting purposes, and that the form is not part of an application for employment by the board. You assert that employees who completed EEO Data Forms did not anticipate that the information would be disclosed for any other purposes and to anyone other than federal EEO agencies. You are concerned that release of the requested birth dates would subject the board's employees to a risk of identity theft and would be contrary to their expectations in providing the information. We note that information is not confidential under the Act simply because the party that provides the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Moreover, both the Third Court of Appeals and this office have held that date of birth information is not confidential. *See Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629, 635 (Tex.

App.—Austin 2008, pet. granted); Attorney General Opinion MW-283 (1980) (public employee's date of birth not protected by privacy); Open Records Decision No. 455 at 7 (1987) (birth dates, names, and addresses not protected by privacy). We therefore conclude that the requested birth dates must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a large, stylized flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 354223

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

Notice set: Final Interlocutory None

DC BK11189 PG904

Disp Parties: All

Disp code: CVD/CLS 4611

Redact pgs: \_\_\_\_\_

Judge RGH Clerk LM

Cause No. D-1-GV-09-001587

TEXAS MEDICAL BOARD,  
*Plaintiff,*

v.

ATTORNEY GENERAL OF TEXAS,  
*Defendant.*

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IN THE DISTRICT COURT  
  
345th JUDICIAL DISTRICT  
  
TRAVIS COUNTY, TEXAS

Filed in The District Court  
of Travis County, Texas

JUN 30 2011 BP

At Amalia Rodriguez-Mendoza, Clerk

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Texas Medical Board (TMB) and Defendant Greg Abbott, Attorney General of Texas, representing his Open Records Division ("Attorney General"), appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally settled.

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2009). The parties represent to the Court that, in compliance with PIA § 552.325(c), the requestor, Barbara Fort, was sent reasonable notice of this setting and of the parties' agreement that TMB must withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. The requestor neither filed a motion to intervene nor appeared today.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

Unofficial copy - Travis Co. District Clerk Amalia Rodriguez-Mendoza



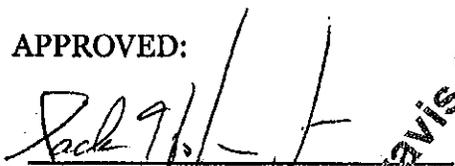
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

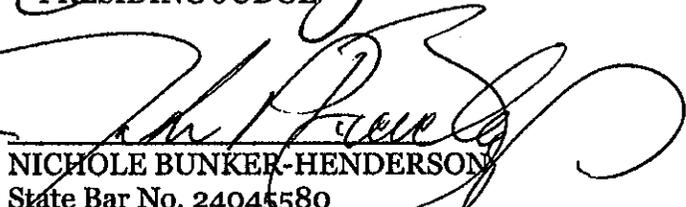
1. The information at issue, specifically, the requested TMB employees' dates of birth, is excepted from disclosure pursuant to Tex. Gov't Code § 552.102.
2. TMB may withhold from the requestor the information described in Paragraph 1 of this Judgment.
3. TMB has already disclosed all responsive information to the requestor, except for the TMB employees' dates of birth.
4. All costs of court are taxed against the parties incurring the same;
5. All relief not expressly granted is denied; and
6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 30 day of July, 2011.

  
 PRESIDING JUDGE

APPROVED:

  
 JACK HOHENGARTEN  
 State Bar No. 09812200  
 Assistant Attorney General  
 Financial Litigation Division  
 Office of the Attorney General  
 300 W. 15<sup>th</sup> Street, 6<sup>th</sup> Floor  
 Austin, Texas 78701  
 Telephone: (512) 475-3503  
 Facsimile: (512) 477-2348/480-8327

  
 NICHOLE BUNKER-HENDERSON  
 State Bar No. 24045580  
 Assistant Attorney General  
 Environmental Protection and  
 Administrative Law Division  
 Office of the Attorney General  
 P.O. Box 12548, Capitol Station  
 Austin, Texas 78711-2548  
 Telephone: (512) 936-7935  
 Facsimile: (512) 320-0167

ATTORNEY FOR PLAINTIFF  
TEXAS MEDICAL BOARD

ATTORNEY FOR DEFENDANT  
ATTORNEY GENERAL



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

June 30, 2011

Ms. Amalia Rodriguez-Mendoza  
Travis County District Clerk  
Travis County Courthouse  
1000 Guadalupe, Room 327  
Austin, TX 78701

Via Hand Delivery

Re: Cause No. D-1-GN-09-001587, *Texas Medical Board v. Attorney General of Texas*, in the 345<sup>th</sup> Judicial District Court of Travis County, Texas

Dear Ms. Rodriguez-Mendoza:

Enclosed for filing please find the original and one copy of an Agreed Final Judgment in the above-entitled cause.

Please file-mark the extra copy of this document and return it to the courier. By copy of this correspondence copies are being sent to all parties of record.

Thank you for your attention to this matter.

Sincerely,

Connie Wyatt, Legal Secretary for  
NICHOLE BUNKER-HENDERSON  
Assistant Attorney General  
Open Records Litigation  
Environmental Protection and  
Administrative Law Division  
P.O. Box 12548, Capitol Station  
Telephone: (512) 475-4300  
Facsimile: (512) 320-0167

Unofficial copy - Travis Co. District Clerk Amalia Rodriguez-Mendoza

Encl.

cc: Jack Hohengarten

Via Electronic Mail

POST OFFICE BOX 12548, AUSTIN, TEXAS 78711-2548 TEL: (512)463-2100

WEB: WWW.OAG.STATE.TX.US