



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 24, 2009

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

OR2009-11841

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# 353775 (DSHS OR File No. O15509-2009).

The Texas Department of State Health Services (the "department") received a request for information pertaining to a specified complaint.<sup>1</sup> You claim that the requested 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. This section encompasses confidentiality provisions such as section 402.154 of the Occupations Code, which provides:

(h) All information and materials subpoenaed or compiled by the [State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the "committee")] in connection with a complaint and

---

<sup>1</sup>We note that the department asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

investigation are confidential and not subject to disclosure under [the Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the committee 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 committee in a disciplinary action against the holder of a license;
  - (2) professional licensing or disciplinary boards for the fitting and dispensing of hearing instruments 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 committee against a holder of a license, the nature of those charges, disciplinary proceedings of the committee, and final disciplinary actions, including warnings and reprimands, by the committee are not confidential and are subject to disclosure in accordance with [the Act].

Occ. Code § 402.154(h), (i). You state that the submitted documents were gathered or created by the committee, which is a part of the department's Professional Licensing and Certification Unit, in response to a complaint and related investigation regarding the licensed fitter and dispenser of hearing instruments at issue. You further state that none of the exceptions to confidentiality under section 402.154(h) are applicable in this instance, and indicate that none of the submitted information is subject to release under section 402.154(i). Based on your representations and our review, we conclude that the submitted information is made confidential in its entirety pursuant to section 402.154(h) of the Occupations Code. The department must, therefore, withhold the submitted information pursuant to section 552.101 of the Government Code.

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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 353775

Enc. Submitted documents

c: Requestor  
(w/o enclosures)