



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2010

Ms. Joy Sparks
General Counsel
State Board of Dental Examiners
333 Guadalupe, Tower 3, Suite 800
Austin, Texas 78701-3942

OR2010-03134

Dear Ms. Sparks:

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# 371687.

The State Board of Dental Examiners (the "board") received a request for information pertaining to a named individual. We understand you have released some information to the requestor. You state the board does not have any responsive letters pertaining to license termination, peer reviews, or hearings.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.² 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

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

² Although you cite section 254.006 of the Occupations Code for your argument to withhold the submitted information, we understand you to raise section 552.101 of the Government Code in conjunction with section 254.006, as this is the proper exception for your argument.

Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 254.006 of the Occupations Code, which states:

(a) Except as provided by this section, the investigation files and other records of the board are public records and open to public inspection at reasonable times.

(b) Investigation files and other records are confidential and shall be divulged only to the persons investigated at the completion of the investigation. The board may share investigation files and other records with another state regulatory agency or a local, state, or federal law enforcement agency.

(c) The exception from public disclosure of investigation files and records provided by this section does not apply to the disclosure of a disciplinary action of the board, including:

- (1) the revocation or suspension of a license;
- (2) the imposition of a fine on a license holder;
- (3) the placement on probation with conditions of a license holder whose license has been suspended;
- (4) the reprimand of a license holder; or
- (5) the issuance of a warning letter to a license holder.

Occ. Code § 254.006. You indicate the submitted information consists of investigation files and records of the board compiled in response to a complaint filed against a dentist licensed by the board. You do not indicate, and the submitted information itself does not reflect, that subsection 254.006(c) is applicable to any of the information at issue. Therefore, based on your representations and our review of the submitted information, we conclude the submitted information is confidential under section 254.006(b) of the Occupations Code and must be withheld in its entirety under 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,

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James McGuire". The signature is stylized and cursive.

James McGuire
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 371687

Enc. Submitted documents

c: Requestor
(w/o enclosures)