



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2010

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

OR2010-09137

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# 383564 (DSHS File No. 17232-2010).

The Texas Department of State Health Services (the "department") received a request for six categories of information relating to two complaints regarding the requestor's client. You indicate that some of the requested information either has been or will be released. 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 information you submitted.

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 exception encompasses information that other statutes make confidential. You claim section 552.101 in conjunction with section 605.2021 of the Occupations Code. Chapter 605 of the Occupations Code provides for the investigation of complaints filed with the Texas Board of Orthotics and Prosthetics (the "board") by the commissioner of public health, which we understand are both part of the department. Section 605.2021 provides in part:

(h) All information and materials subpoenaed or compiled by the board 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 board 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 board 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 board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

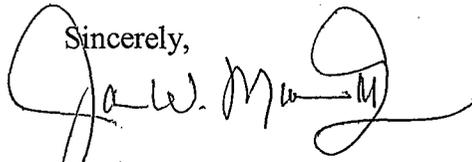
Occ. Code § 605.2021(h)-(I). You state that the submitted information was gathered or created in response to a complaint and that an investigation was ongoing when the department received the instant request for this information. You also state that the exceptions to confidentiality under section 605.2021(h) are not applicable in this instance. Based on your representations and our review, we find that the information at issue was subpoenaed or compiled by the board in connection with a complaint and investigation under chapter 605 of the Occupations Code. We therefore conclude that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 605.2021 of the Occupations 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

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

JWM/tp

Ref: ID# 383564

Enc: Submitted documents

c: Requestor  
(w/o enclosures)