



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 4, 2010

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

OR2010-11764

Dear Mr. Jansky:

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# 389192 (DSHS File No. 17530-2010).

The Texas Department of State Health Services (the "department") received a request for information sent from specified physicians pertaining to the requestor's driver's license. 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 submitted information.

Section 552.101 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 raise section 552.101 in conjunction with section 12.097 of the Health and Safety Code, which provides as follows:

- (a) All records, reports, and testimony relating to the medical condition of an applicant or license holder:

(1) are for the confidential use of the medical advisory board [of the department], a panel, or the Department of Public Safety of the State of Texas;

(2) are privileged information; and

(3) may not be disclosed to any person or used as evidence in a trial except as provided by Subsection (b).

(b) In a subsequent proceeding under Subchapter H,<sup>1</sup> Chapter 411, Government Code, or Subchapter N,<sup>2</sup> Chapter 521, Transportation Code, the medical standards division [of the department] may provide a copy of the report of the medical advisory board or panel and a medical record or report relating to an applicant or license holder to:

(1) the Department of Public Safety of the State of Texas;

(2) the applicant or license holder; and

(3) the officer who presides at the hearing.

Health & Safety Code § 12.097 (footnotes in original); *see also id.* §§ 12.092(b) (providing for appointment of medical advisory board to assist department in determining whether driver's license applicant or license holder is capable of safely operating motor vehicle), .095 (providing for medical advisory board opinion or recommendation of department). You indicate the submitted information relates to the medical condition of a license holder and is maintained by the medical advisory board. You also state that section 12.097(b) does not apply in this instance. Based on your representations and our review of the information at issue, we conclude that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 12.097 of the Health and Safety Code.

You request this office issue a previous determination that would permit the department to withhold from disclosure, under section 552.101 of the Government Code in conjunction with section 12.097(a) of the Health and Safety Code, information relating to the medical condition of an applicant or license holder of a driver's license or concealed handgun license, without requesting a ruling from this office. *See Gov't Code § 552.301(a)*; Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a previous determination at this time.

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<sup>1</sup>V.T.C.A., Government Code § 411.171 *et seq.*

<sup>2</sup>V.T.C.A., Transportation Code § 521.291.

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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 389192

Enc. Submitted documents

c: Requestor  
(w/o enclosures)