



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2010

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

OR2010-13272

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# 392404 (DSHS File No. 017601-2010).

The Texas Department of State Health Services (the "department") received a request for information contained in complaint # 1070-09-0044. 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 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 raise 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 [the Act] 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 [the Act].

Occ. Code § 605.2021(h), (i). You state that the responsive information was gathered or created by the board in response to a complaint and an investigation occurred. 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 agree that the submitted information 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. However, if the department has filed formal charges against this person, the nature of those charges, disciplinary proceedings of the board, and any final disciplinary actions are not confidential and must be released to the requestor. *See id.* § 605.2021(i).

You also ask this office to issue a previous determination permitting the department to withhold information subject to section 605.2021 of the Occupations Code without the necessity of requesting a decision from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) for information held by the department that is made confidential under section 605.2021(h) of the Occupations Code and must be withheld under section 552.101 of the Government Code on that basis. We note that you must only withhold this type of

information when none of the exceptions to confidentiality under section 605.2021(h) apply. Furthermore, in accordance with section 605.2021(i) of the Occupations Code, the department may not withhold the nature of any charges filed, disciplinary proceedings of the board, or any final disciplinary actions. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 392404

Enc. Submitted documents

c: Requestor
(w/o enclosures)