



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2010

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

OR2010-15346

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# 396037.

The Texas Department of State Health Services (the "department") received a request for all documents pertaining to a specified department medical advisory board case. You state you have released some information to the requestor. You claim 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 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,¹ Chapter 411, Government Code, or Subchapter N,² 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)(1) (providing for appointment of medical advisory board to assist Department of Public Safety 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 section 12.097(b) does not apply in this instance. Based on your representations and our review, we conclude 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 also ask this office to issue a previous determination permitting the department to withhold information subject to section 12.097(a) of the Health and Safety 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) that the department must withhold from required public disclosure all records, reports, and testimony held by the department relating to the medical condition of a driver's license or concealed handgun license applicant or license holder based on section 12.097(a) of the Health and Safety Code in conjunction with section 552.101 of the

¹V.T.C.A., Government Code § 411.171 et seq.

²V.T.C.A., Transportation Code § 521.291.

Government Code. The department may rely on this previous determination to withhold requested information only when section 12.097(b) of the Health and Safety Code does not apply. 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 396037

Enc. Submitted documents

c: Requestor
(w/o enclosures)