



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2010

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

OR2010-16735

Dear Mr. Richards:

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# 399235 (DSHS File 17850/2010).

The Texas Department of State Health Services (the "department") received a request for (1) information pertaining to a specified complaint filed by the requestor; (2) federal guidelines related to state oversight of sex offender treatment providers; and (3) all documents, including personnel manuals, mandated training, and updated protocols, regarding customs, practices, policies, and procedures for handling complaints and investigations by the Council on Sex Offender Treatment (the "council"). You claim the submitted complaint file records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the requested federal guidelines or department policies and procedures. To the extent information responsive to those parts of the request existed on the date the department received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

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. Section 552.101 encompasses chapter 110 of the Occupations Code. This chapter provides for, among other things, investigation of complaints filed with the council, which is a part of the department. Section 110.256 provides, in relevant part:

(a) Except as provided by Subsection (b), all information and materials subpoenaed or compiled by the council 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 council or its employees or agents involved in the complaint and investigation.

(b) The information described by Subsection (a) may be disclosed to:

(1) persons involved with the council in a complaint and investigation;

(2) professional sex offender treatment provider licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the [department]¹ under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information is deleted.

(c) The filing of formal charges by the council against a person under this chapter, the nature of those charges, the council's disciplinary proceedings, and final disciplinary actions, including warnings and reprimands, by the council are not confidential and are subject to disclosure in accordance with [the Act].

Occ. Code § 110.256(a)-(c). You state the submitted complaint file was compiled by the council as a result of a complaint and subsequent investigation. You represent the exceptions to confidentiality under section 110.256(b) are not applicable. Based on your representations and our review of the submitted information, we agree the submitted records are confidential

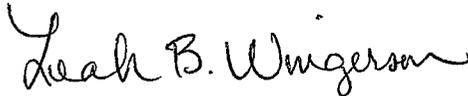
¹The "board" referred to in the statute is the former Texas Board of Health, now the Texas Department of State Health Services. See Act of June 2, 2003, 78th Leg., R.S., ch. 198, §§ 1.09, 1.19, 1.26, 2003 Tex. Gen. Laws 611, 618-23, 636-37, 641, 729.

under section 110.256(a), and the department must withhold them under section 552.101 of the Government Code. However, to the extent the council has filed formal charges against the treatment provider with respect to the complaint, the nature of those charges, disciplinary proceedings of the council, and any final disciplinary actions are not confidential and must be released. *See id.* § 110.256(c).

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 399235

Enc. Submitted documents

c: Requestor
(w/o enclosures)