



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2010

Ms. Suzanne Mitchell
Assistant General Counsel
Texas Medical Board
P.O. Box 2018
Austin, Texas 78768-2018

OR2010-17676

Dear Ms. Mitchell:

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# 400769.

The Texas Medical Board (the "board") received a request for a listing of all Texas legislators who made requests for information about board physician licensees and how many requests each legislator sought in 2007 and 2008.¹ You claim that the submitted information may be 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 seek a ruling on the confidentiality agreements signed by legislators when requesting information about board physician licensees. However, the board has not submitted to our office any signed confidentiality agreements, nor are these agreements responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the board is not required to release non-responsive information in response to this request.

¹You note that the board received a clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 section encompasses information protected by other statutes, such as section 164.007(c) of the Occupations Code, which provides:

Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Occ. Code § 164.007(c). The submitted information consists of a list of names of legislators who have requested information regarding board physician licensees, as well as the number of requests made by each legislator. You state all legislators are required to sign confidentiality agreements when requesting information regarding physicians who are or have been under investigation by the board. You further state these signed confidentiality agreements contain the names of the licensee and "might appropriately be considered part of a licensee's licensure or investigation file." You note a licensee's licensure or investigation file is subject to section 164.007 of the Occupations Code. Thus, you ask this office to determine whether the submitted information is confidential under section 164.007 of the Occupations Code. However, you have failed to establish that the submitted list is maintained in any licensee's licensure or investigation file. Upon review, we find no portion of the submitted information consists of a complaint, adverse report, investigation file, other investigation report, or other investigative information for purposes of section 164.007(c). Furthermore, the submitted information does not include information relating to the identity of, or a report made by, a physician performing or supervising compliance monitoring for the board. Therefore, the submitted information is not confidential under section 164.007 of the Occupations Code, and the board may not withhold it under section 552.101 of the Government Code on that ground. As you raise no further exceptions to disclosure, the submitted information must be released.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 400769

Enc. Submitted documents

c: Requestor
(w/o enclosures)