



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2011

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

OR2011-10814

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# 425049 (DSHS file # 18930).

The Texas Department of State Health Services (the "department") received a request for information on a complaint filed against a named individual. You claim the requested 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. Section 552.101 encompasses chapter 401 of the Occupations Code. This chapter provides for investigation of complaints filed with the State Board of Examiners for Speech-Language Pathology and Audiology (the "board"), which is a part of the department. Section 401.2535 provides, in relevant part, the following:

(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 speech-language pathologist and audiologist licensing or 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 § 401.2535(h), (i). You represent the submitted information was gathered and/or created by the board in response to a complaint and an investigation is ongoing. You also represent the exceptions to confidentiality under section 401.2535(h) are not applicable. Based on your representations and our review of the submitted information, we agree the submitted records are confidential under section 401.2535(h), and the department must withhold them under section 552.101 of the Government Code.

You also ask this office to issue a previous determination permitting the department to withhold information subject to section 401.2535(h) 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 401.2535(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 401.2535(h) apply. Furthermore, in accordance with section 401.2535(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,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tf

Ref: ID# 425049

Enc. Submitted documents

c: Requestor
(w/o enclosures)

