



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2011

Ms. Nycia Deal
Staff Attorney
State Board of Dental Examiners
333 Guadalupe Tower 3 Suite 800
Austin, Texas 78701-3942

OR2011-16015

Dear Ms. Deal:

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# 434815.

The Texas State Board of Dental Examiners (the “board”) received a request for records of final disciplinary actions or board orders involving three specified types of findings or allegations during a specific time period. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code.

We note the board did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov’t Code § 552.301(a). Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request for information, the specific information the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(D). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

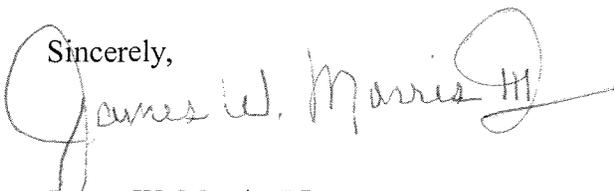
You state the board received the present request for information on August 16, 2011; therefore, the board’s fifteen-business-day deadline under section 552.301(e) was

September 7, 2011. As of the date of this decision, the board has not submitted any information it seeks to withhold. Thus, the board has failed to comply with section 552.301 of the Government Code in requesting this decision, and the requested information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although the board seeks to withhold the requested information under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). In failing to comply with section 552.301 of the Government Code, the board has waived section 552.103 of the Government Code and may not withhold any of the requested information under that exception. See Open Records Decision No. 663 at 5 (1999) (waiver of discretionary exceptions). Thus, as the board claims no other exception to disclosure, the requested 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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looping initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 434815

c: Requestor