



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2011

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

OR2011-17100

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# 436633 (DSHS File No. 19382/2012).

The Texas Department of State Health Services (the "department") received a request for complaints filed against a named individual for a specified time period; any disciplinary action, decision, warning, citation, memorandum, e-mail, letter, "or other identifying information against/on/about" the named individual; and information identifying any companies, non-profit organizations, or business that the named individual uses, owns, leases, or rents "for his state-licensed professional work." You state the department will release some of the requested information. You claim that 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.<sup>1</sup>

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

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<sup>1</sup>You state, and provide documentation demonstrating, the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

section 110.265 of the Occupations Code. Chapter 110 of the Occupations Code provides for, among other things, investigation of complaints filed with the Council on Sex Offender Treatment (the “council”), which is a division 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]<sup>2</sup> 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 information was compiled by the council as a result of complaints 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 information is confidential under section 110.256(a), and the department must withhold this information

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<sup>2</sup>The “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 552.101 of the Government Code. However, to the extent the council has filed formal charges against the treatment provider with respect to any 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](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 "Lindsay E. Hale".

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 436633

Enc. Submitted documents

c: Requestor  
(w/o enclosures)