



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 24, 2012

Mr. Darrel D. Spinks  
General Counsel  
Texas State Board of Examiners of Psychologists  
333 Guadalupe, Suite 2-450  
Austin, Texas 78701

OR2012-01147

Dear Mr. Spinks:

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# 443325.

The Texas State Board of Examiners of Psychologists (the "board") received a request for information provided to board members in preparation for a specified meeting. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed report that is subject to subsection 552.022(a)(1). The board must release the completed report pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of

the Government Code or is expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). You seek to withhold the submitted information under section 552.111 of the Government Code. However, section 552.111 is a discretionary exception and does not make information confidential under the Act. *See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 3-21, 23-26, 28-37* (providing for “confidentiality” of information under specified exceptions); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (governmental body may waive deliberative process privilege under statutory predecessor to section 552.111). Therefore, no portion of the submitted information may be withheld under section 552.111 of the Government Code. However, as section 552.101 of the Government Code is other law for purposes of section 552.022, we will consider your argument under section 552.101 for the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by statutes, such as section 501.205 of the Occupations Code. Chapter 501 of the Occupations Code codifies the Psychologists’ Licensing Act. *See Occ. Code §§ 501.001, et seq.* Section 501.205(a) provides, in relevant part, “[e]xcept as provided by Subsection (b), a complaint and investigation concerning a license holder and all information and materials compiled by the board in connection with the complaint and investigation are not subject to . . . disclosure under Chapter 552, Government Code[.]” *Id.* § 501.205(a). Subsection (b) of section 501.205 provides as follows:

(b) A complaint or investigation subject to Subsection (a) and all information and materials compiled by the board in connection with the complaint may be disclosed to:

- (1) the board and board employees or agents involved in license holder discipline;
- (2) a party to a disciplinary action against the license holder or that party’s designated representative;
- (3) a law enforcement agency if required by law;
- (4) a governmental agency, if:
  - (A) the disclosure is required or permitted by law; and
  - (B) the agency obtaining the disclosure protects the identity of any patient whose records are examined; or
- (5) a legislative committee or committee staff directed to make an inquiry regarding state hospitals or schools, by either house of the

legislature, the presiding officer of either house of the legislature, or the chairman of the legislative committee if the information or records that identify a patient or client are not released for any purpose unless the patient consents and the records are created by the state hospital or school or its employees.

*Id.* § 501.205. You argue the submitted information is subject to section 501.205 because it contains information related to the board's investigation and monitoring of licensee compliance with board disciplinary or eligibility orders. Further, you state the requestor does not fall into any of the five exceptions to confidentiality in subsection 501.205(b). We note the confidentiality provisions of section 501.205(a) pertain only to complaints and investigations that involve license holders. *See id.* §§ 501.251 (person may not engage in practice of psychology unless licensed under chapter 251), .252 (board shall issue license to applicant who meets certain criteria). Based upon your representations and our review, we conclude some of the submitted information, which we have marked, is confidential pursuant to section 501.205 of the Occupations Code. Accordingly, the board must withhold the marked information under section 552.101 of the Government Code in conjunction with section 501.205 of the Occupations Code. However, we note the remaining information pertains to investigations of individuals who were not license holders at the time of the complaint and investigation. Thus, we find you have failed to demonstrate the remaining information is confidential pursuant to section 501.205(a) of the Occupations Code, and none of the remaining information may be withheld under section 552.101 of the Government Code on that basis. Accordingly, the remaining 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 443325

Enc. Submitted documents

c: Requestor  
(w/o enclosures)