



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2012

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

OR2012-05337

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# 450556.

The Texas State Board of Examiners of Psychologists (the “board”) received a request for all information possessed by the board regarding interactions with a named individual. You claim that 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 representative sample of information.¹ We have also received and considered comments submitted by the requestor. *See* Gov’t Code § 552.304 (interested party may submit written comments regarding availability of requested 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.” *Id.* § 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

¹We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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). However, you inform us that the individual at issue “was not a licensee of the board at the time the complaint was filed.” While you assert that the individual submitted an application for a temporary licensure, we note this application was submitted after the date the complaint was filed against the individual, resulting in the investigation at issue. Accordingly, the submitted information relates to an investigation of an individual who was not a license holder at the time of the complaint. Thus, we find you have failed to demonstrate the submitted information is confidential pursuant to

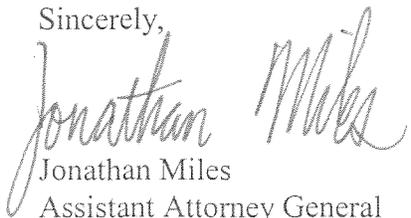
section 501.205(a) of the Occupations Code, and none of the submitted information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 611.002(a) of the Health and Safety Code, which provides “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See Open Records Decision No. 565 (1990)*. These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient’s behalf, or a person who has the written consent of the patient. *See Health & Safety Code §§ 611.004, .0045*. Upon review, we find the information we have marked constitutes a mental health record that is confidential under section 611.002 of the Health and Safety Code. Access to mental health records is governed by the provisions of sections 611.004 and 611.0045, rather than the Act. *Open Records Decision Nos. 598 (1991), 451 at 4 (1986)*. Therefore, the marked information may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.² As you raise no further exceptions, 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

²As our ruling is dispositive, we need not address your remaining argument for this information.

Ref: ID# 450556

Enc. Submitted documents

c: Requestor
(w/o enclosures)