



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2012

Mr. Chris Kloeris
Executive Director
Texas Optometry Board
333 Guadalupe Street, Suite 2-420
Austin, Texas 78701-3942

OR2012-10517

Dear Mr. Kloeris:

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# 459046.

The Texas Optometry Board (the "board") received a request for "all documents, meeting minutes, correspondence, and communication between the patient, optometrist, and [the board] regarding" a specified case.¹ You inform us meeting minutes pertaining to this

¹You note that the board sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

request do not exist.² You state some of the requested information has been released. 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 representative sample of information.³

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 exception encompasses information made confidential by other statutes, such as section 351.2045(a) of the Occupations Code, which provides as follows:

(a) The board’s investigation files are confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to the board or an employee or agent of the board.

Occ. Code § 351.2045(a). You state the submitted information consists of an investigative file of the board. Based on your representations and our review of the information at issue, we conclude the submitted information is confidential under section 351.2045(a) of the Occupations Code. You do not inform us the board is authorized to release such information to this requestor. *See id.* 351.2045(b)-(d). Accordingly, the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 351.2045(a) of the Occupations Code.⁴

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,

²We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

³We assume the “representative sample” of information 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 those submitted to this office.

⁴As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 459046

Enc. Submitted documents

c: Requestor
(w/o enclosures)