

December 18, 2012

**Ms. Gay Dodson**  
Executive Director/ Secretary  
Texas State Board of Pharmacy  
333 Guadalupe Street, Suite 3-600  
Austin, Texas 78701

OR2012-20344

Dear Ms. Dodson:

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# 474260 (TSBP Complaint No. 2012-04117)

The Texas State Board of Pharmacy (the “board”) received a request for all investigatory documents regarding the requestor’s complaint against a named pharmacy. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

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. Section 552.101 encompasses information made confidential by other statutes such as section 565.055 of the Occupations Code. Section 565.055 provides:

(a) The board or the board’s authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.

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<sup>1</sup>Although you also raise section 552.111 of the Government Code, you make no arguments to support this exception. Accordingly, we find the board has waived its claim under section 552.111 of the Government Code. *See* Gov’t Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

(b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) any means of legal compulsion for release, including disclosure, discovery, or subpoena, to anyone other than the board or a board employee or board agent involved in discipline of a license holder.

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed:

(1) during any proceeding conducted by the State Office of Administrative Hearings, to the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

(2) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal, if the information is necessary for preparation for, or a presentation in, the proceeding;

(3) to an entity in another jurisdiction that licenses or disciplines pharmacists or pharmacies;

(4) to a pharmaceutical or pharmacy peer review committee as described under Chapter 564;

(5) to a law enforcement agency;

(6) to a person engaged in bona fide research, if all information identifying a specific individual has been deleted; or

(7) under a court order.

Occ. Code § 565.055. You state a portion of the submitted information consists of “compilations of evidence [that] were made at the request of the [board] or an authorized representative in the course of investigating and gathering evidence concerning an alleged violation of the Texas Pharmacy Act or Board Rule.” You do not inform us the requestor is entitled to this information pursuant to section 565.055(c). Thus, based on your representations and our review, we agree the information at issue, which we have marked, is confidential under section 565.055(b) and must be withheld under section 552.101 of the

Government Code. *See* Open Records Decision No. 474 at 2-3 (1987) (construing predecessor statute).

Section 552.101 of the Government Code also encompasses section 555.010 of the Occupations Code. Section 555.002 states any person with knowledge of a pharmacist's, or pharmacy's, actions or omission that constitute grounds for disciplinary action may provide relevant records and information to the board. *See id.* § 555.002(c). Section 555.010 of the Occupations Code provides:

The identity of a person who reports to or assists the board under Section 555.002(c) and a document that could disclose the identity of that person are confidential and are not considered public information for the purposes of Chapter 552, Government Code.

*Id.* § 555.010. You contend the remaining information is confidential under section 555.010 because the information consists of documents relating to a complainant. The bill analysis for the statutory predecessor to section 555.010 states this section “[p]rovides confidentiality and an exemption from the [Act] for information provided and the identity of the person who provided the information.” Senate Research Center, Bill Analysis, Tex. S.B. 1161, 70th Leg., R.S. (1987). Thus, section 555.010 protects the identity of an individual who files a complaint with or assists the board. It also protects a document in its entirety when necessary to protect the identities of such individuals.

We note the remaining information consists of the complaint filed with the board and correspondence from the board to the complainant. Upon review, we find the complaint in its entirety is information that discloses the complainant's identity. Further, the remaining information contains the identity of the complainant. Therefore, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 555.010 of the Occupations Code. However, we find the remainder of the information does not disclose the identity of a person who reports to or assists the board. Accordingly, the remainder of the information at issue may not be withheld under section 552.101 of the Government Code in conjunction with section 555.010 of the Occupations Code.

In summary, the board must withhold the following information under section 552.101 of the Government Code: (1) the information we have marked under section 565.055 of the Occupations Code; and (2) the information we have marked under section 555.010 of the Occupations Code. 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,

Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 474260

Enc. Submitted documents

c: Requestor  
(w/o enclosures)