



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2013

Mr. Marcelino A. Estrada
Executive Director
Texas Board of Professional Land Surveying
Building A, Suite 156 MC-230
12100 Park 35 Circle
Austin, Texas 78753

OR2013-08449

Dear Mr. Estrada:

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# 487861.

The Texas Board of Professional Land Surveying (the "board") received a request for information related to complaint numbers 12-23 or 12-24. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted identifying information of certain individuals from the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code §§ 552.301(a), .301(e)(1)(D). However, you do not assert, nor does our review of our records indicate, the board is authorized to withhold any redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, this type of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the board should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant

to statutory authority. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. Section 1071.204 of the Occupations Code provides, in part:

(a) The board shall maintain a file on each written complaint filed with the board that the board has authority to resolve.

...

(d) Except as provided by Subsection (e), a complaint filed with the board is public information.

(e) For any complaint determined to be frivolous or without merit, the complaint and other enforcement case information related to that complaint are confidential. The information may be used only by the board or by its employees or agents directly involved in the enforcement process for that complaint. The information is not subject to discovery, subpoena, or other disclosure.

(f) In this section, “frivolous complaint” means a complaint that the executive director and investigator, with board approval, determine:

(1) was made for the purpose of harassment; and

(2) does not demonstrate harm to any person.

Occ. Code § 1071.204(a), (d)-(f). You assert the submitted information is excepted from disclosure under section 1071.204(e). You inform us that the information at issue concerns two pending enforcement case files which are open and unresolved. We note the confidentiality of section 1071.204(e) expressly applies only to complaint and enforcement case information related to “any complaint determined to be frivolous or without merit[.]” *Id.* § 1071.204(e). Thus, because the submitted information does not relate to complaints that have been determined to be frivolous or without merit, we find you have failed to demonstrate the applicability of section 1071.204(e) to the submitted information. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature’s intent is served by beginning with statute’s plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the

statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.” (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994)); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Therefore, we conclude the information is not confidential under section 1071.204(e) of the Occupations Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who as a contractual relationship with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *Id.* § 552.137(c). In this instance, the e-mail address you have marked is contained on letterhead. Therefore, this e-mail address may not be withheld under section 552.137 of the Government Code and must be released. As no further exceptions are raised, the submitted 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 487861

Enc. Submitted documents

c: Requestor
(w/o enclosures)