



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 19, 2013

Mr. Marc Allen Connelly  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2013-14442

Dear Mr. Connelly:

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# 496688 (DSHS File: 21715/2013).

The Texas Department of State Health Services (the "department") received a request for all complaint records, including findings by the department, reprimands, and disciplinary records, pertaining to a named individual. You inform us the department is releasing some of the requested information. You indicate some information will be withheld pursuant to a previous determination issued to the department in Open Records Letter No. 2007-13759 (2007). *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 at 6-7 (2001). You claim 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 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 protected by other statutes, such as section 110.256 of the Occupations Code. Chapter 110 of the Occupations Code provides for, among other things, investigation of complaints filed with the Council on Sex Offender Treatment (the "council"), which is a division of the department. Section 110.256 provides:

(a) Except as provided by Subsection (b), all information and materials subpoenaed or compiled by the council in connection with a complaint and investigation are confidential and not subject to disclosure under [the Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the council or its employees or agents involved in the complaint and investigation.

(b) The information described by Subsection (a) may be disclosed to:

- (1) persons involved with the council in a complaint and investigation;
- (2) professional sex offender treatment provider licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the [department]<sup>1</sup> under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information is deleted.

(c) The filing of formal charges by the council against a person under this chapter, the nature of those charges, the council's disciplinary proceedings, and final disciplinary actions, including warnings and reprimands, by the council are not confidential and are subject to disclosure in accordance with [the Act].

Occ. Code § 110.256. You inform us the submitted information was compiled by the council in response to a complaint and subsequent investigation. You also inform us the exceptions to confidentiality under section 110.256(b) are not applicable. Based on your representations and our review, we agree the submitted information is confidential under section 110.256(a) and the department must withhold this information under section 552.101 of the Government Code on that basis. However, to the extent the council has filed formal charges against the treatment provider with respect to any complaint, the nature of those charges, disciplinary proceedings of the council, and any final disciplinary actions are not confidential and must be released. *See id.* § 110.256(c).

You also ask this office to issue a previous determination permitting the department to withhold information subject to section 110.256(a) of the Occupations Code

---

<sup>1</sup>The "board" referred to in the statute is the former Texas Board of Health, now the Texas Department of State Health Services. *See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, §§ 1.09, 1.19, 1.26, 2003 Tex. Gen. Laws 611, 618-23, 636-37, 641, 729.

without the necessity of requesting a decision from this office. *See* Gov't Code § 552.301(a); ORD 673 at 6-7. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) of the Government Code for information held by the department that is made confidential under section 110.256(a) of the Occupations Code and must be withheld under section 552.101 of the Government Code on that basis. We note that you must only withhold this type of information when none of the exceptions to confidentiality under section 110.256(b) apply. Furthermore, in accordance with section 110.256(c) of the Occupations Code, the department may not withhold the nature of any charges filed, disciplinary proceedings of the council, or any final disciplinary actions. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 496688

Enc. Submitted documents

c: Requestor  
(w/o enclosures)