



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2015

Ms. Kimberley Ellars
Attorney
State Preservation Board
P.O. Box 13286
Austin, Texas 78711

OR2015-17248

Dear Ms. Ellars:

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# 577606.

The State Preservation Board (the "board") received a request for a copy of the requestor's employment and personnel file, as well as six additional categories of information relating to the requestor. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us some of the submitted information is not responsive because it does not pertain to the requestor. This decision does not address the public availability of the non-responsive information, and that information need not be released.

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. This section encompasses the Americans with Disabilities Act ("ADA"). See 42 U.S.C. §§ 12101 *et seq.* Title I of the ADA requires information about the medical conditions and medical histories of applicants or employees be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. The federal Equal Employment Opportunity Commission (the "EEOC") has

determined medical information for purposes of the ADA includes “specific information about an individual’s disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual.” *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). We note the provisions of the ADA preempt any right of access the requestor might have to her own information under state law. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Upon review, we find most of the information you have marked is confidential under the ADA. Therefore, the board must withhold this information under section 552.101 of the Government Code in conjunction with the ADA.¹ However, we find you have failed to demonstrate how the remaining information at issue, which we have marked for release, consists of confidential information under the ADA, and the board may not withhold it on that basis. As you raise no further arguments for the remaining information, the board must release the remaining responsive information.

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.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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/eb

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 577606

Enc. Submitted documents

c: Requestor
(w/o enclosures)