



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2017

Mr. Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2017-00412

Dear Mr. Bowman:

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# 640928 (PIR# 20170076).

The Texas Department of Licensing and Regulation (the "department") received a request for the e-mail addresses and telephone numbers of licensed cosmetologists, estheticians, and massage therapists. You state the department does not have responsive information for massage therapists.¹ You also state the department has released the telephone numbers of licensed cosmetologists and estheticians. You claim the submitted information is excepted

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

from disclosure under section 552.101 of the Government Code². We have considered the exception you claim and reviewed the submitted representative sample of information.³

Initially, we note some of the submitted information is not responsive to the instant request because it does not consist of e-mail addresses. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

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 section 51.207 of the Occupations Code, which provides, in relevant part:

(c) The department may satisfy any requirement under [chapter 51] or another law governing a program subject to regulation by the department to provide notice by delivering the notice by e-mail to the recipient’s last known e-mail address if the recipient has previously authorized the department to deliver the notice by e-mail. An e-mail address used under this subsection is confidential and is not subject to disclosure under [the Act].

Occ. Code § 51.207(c). You argue the licensees’ e-mail addresses in the submitted information are confidential pursuant to section 51.207(c) of the Occupations Code. You state the primary purpose of obtaining the e-mail addresses is to send notices pertaining to license renewal and other compliance related matters. However, we are unable to determine if the department is satisfying any requirement under chapter 51 of the Occupations Code or another law governing a program subject to regulation by the department by sending the notices to the recipients. We are also unable to determine if the recipients whose e-mail addresses are at issue authorized the department to deliver the notices by e-mail. Therefore, we must rule conditionally. If the department is satisfying any requirement under chapter 51 of the Occupations Code or another law governing a program subject to regulation by the department by sending the notices and if the recipients whose e-mail addresses are at issue authorized the department to deliver the notices by e-mail, then the department must withhold those recipients’ e-mail addresses under section 552.101 of the Government Code in conjunction with section 51.207(c) of the Occupations Code. However, if the department is not satisfying any requirement under chapter 51 of the Occupations Code or another law

²We note the department failed to comply with section 552.301 of the Government Code in requesting a ruling; however, section 552.101 of the Government Code is a mandatory exception that constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov’t Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the department’s argument under section 552.101.

³We assume the “representative sample” of records 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 that those records contain substantially different types of information than that submitted to this office.

governing a program subject to regulation by the department by sending the notices or the recipients whose e-mail addresses are at issue did not authorize the department to deliver the notices by e-mail, then the department may not withhold the e-mail addresses under section 552.101 of the Government Code in conjunction with section 51.207(c) of the Occupations Code. In that instance, as you raise no further exceptions to disclosure, the responsive information must be released.

You ask this office to issue a previous determination permitting the department to withhold licensees' e-mail addresses under section 552.101 of the Government Code in conjunction with section 51.207(c) of the Occupations Code without seeking a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 640928

Enc. Submitted documents

c: Requestor
(w/o enclosures)