



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 11, 2017

Ms. Wendy A. Pajak  
Assistant General Counsel  
Texas Medical Board  
P.O. Box 2018  
Austin, Texas 78768-2018

OR2017-00754

Dear Ms. Pajak:

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# 641373 (PIR No. 26932).

The Texas Medical Board (the "board") received a request for all documents relating to any complaints, allegations, investigations, or cases relating to surgical assistants or surgical technicians exceeding their scope of practice or job responsibilities. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have informed us the information you have redacted is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the board is not required to release non-responsive 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. This exception encompasses section 206.157 of the Occupations Code, which provides:

A complaint, adverse report, investigation file, or other report, the identity of and reports made by a physician or surgical assistant performing or

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<sup>1</sup>Although you also raise Texas Rule of Evidence 503, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. See Open Records Decision No. 676 at 1-2 (2002).

supervising compliance monitoring for the medical board, or other investigative information in the possession of or received or gathered by the medical board, medical board employee or agent relating to a license holder, a license application, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the medical board or medical board employee or agent involved in license holder discipline.

Occ. Code § 206.157. You state the responsive information in Exhibits 7 through 9 consists of the board's investigation file pertaining to a licensed surgical assistant. Based on your representations and our review, we agree the information at issue is confidential under section 206.157. *See id.* We have no indication the disclosure provisions in chapter 206 apply to the requestor. *Id.* §§ 206.155(a), .156, .157, .158. Therefore, the board must withhold the responsive information in Exhibits 7 through 9 under section 552.101 of the Government Code in conjunction with section 206.157 of the Occupations Code.<sup>2</sup>

You also ask this office to issue a previous determination permitting the board to withhold investigative information in the possession of or received or gathered by the board under section 552.101 of the Government Code in conjunction with section 206.157 of the Occupations Code, without requesting a ruling from this office. 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](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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/som

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 641373

Enc. Submitted documents

c: Requestor  
(w/o enclosures)