



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2017

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

OR2017-13837

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# 662886 (TMB Ref. No. 27610).

The Texas Medical Board (the "board") received a request for the board's licensure database, including names, e-mail addresses, and phone numbers, as well as recent rulings regarding the disclosure of related information.¹ You state the board will release some of the requested information to the requestor upon payment of costs. We understand the board is withholding some information under section 164.007 of the Occupations Code pursuant to Open Records Letter No. 2007-03117 (2007).² You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.137, and 552.139 of the Government Code. We

¹You state the board sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Open records Letter No. 2007-03117 authorizes the board to withhold investigative information that is in the possession of or was received or gathered by the board during the investigation of a license holder under section 552.101 of the Government Code in conjunction with section 164.007(c) of the Occupations Code.

have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note a portion of the request requires the board to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, we assume the board has made a good faith effort to locate any information responsive to this request. Accordingly, we will address your claimed exceptions for the submitted information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Section 156.006 of the Occupations Code provides, in part:

(a) Each license holder shall submit to the board telephone numbers, fax numbers, and e-mail addresses, if available and as appropriate, that the board may use to contact the license holder in an emergency.

...

(d) The information provided by a license holder under this section is confidential and is not subject to disclosure under [the Act]. The board may not publish, release, or make available information provided by a license holder under this section except as provided by Subsection (e).

Occ. Code § 156.006(a), (d). You state the telephone numbers and e-mail addresses in Exhibits 4 and 6 belong to licensed physicians and were provided to the board pursuant to section 156.006(a). Upon review, we find the board must withhold the telephone numbers and e-mail addresses in Exhibits 4 and 6 under section 552.101 of the Government Code in conjunction with section 156.006(d) of the Occupations Code.⁴

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.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.139 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Gov't Code § 552.139(a). Section 2059.055 of the Government Code provides in part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). You state the physician e-mail addresses in Exhibit 7 are “used as unique user codes for physicians to access the [board’s] secure computer systems.” Accordingly, you state these e-mail addresses are part of the board’s computer network security and “safeguard access to sensitive and confidential information held in the secure online systems of the [board].” Based on these representations and our review of the information, we find the board has demonstrated the information at issue relates to computer network security, restricted information under section 2059.055, or to the design, operation, or defense of the computer network as contemplated in section 552.139(a). Accordingly, the board must withhold the e-mail addresses in Exhibit 7 under section 552.139(a) of the Government Code.⁵

In summary, the board must withhold the telephone numbers and email addresses in Exhibits 4 and 6 under section 552.101 of the Government Code in conjunction with section 156.006(d) of the Occupations Code. The board must withhold the e-mail addresses in Exhibit 7 under section 552.139(a) of the Government Code. The board must release the remaining information.

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

You ask this office to issue a previous determination permitting the board to withhold telephone numbers and e-mail addresses collected and maintained by the board under section 552.101 of the Government Code in conjunction with section 156.006(d) of the Occupations Code and section 552.139 of the Government Code, without seeking a ruling from this office. *See id.* § 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.

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/tdw

Ref: ID# 662886

Enc. Submitted documents

c: Requestor
(w/o enclosures)