September 11, 2017

Ms. Megan G. Holloway
Staff Attorney
Texas State Board of Pharmacy
333 Guadalupe Street, Suite 3-500
Austin, Texas 78701-3943

Dear Ms. Holloway:

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# 674780.

The Texas State Board of Pharmacy (the “board”) received a request for ten categories of information related to a specified pharmacy. You state the board has released some information, with redactions pursuant to section 552.147(b) of the Government Code.¹ You state the board does not have information responsive to portions of the request.² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103.

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

²The 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 dism’d); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).
of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.\(^3\)

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 information made confidential by other statutes, such as section 565.055 of the Occupations Code. Section 565.055 provides:

(a) The board or the board’s authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.

(b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) any means of legal compulsion for release, including disclosure, discovery, or subpoena, to anyone other than the board or a board employee or board agent involved in discipline of a license holder.

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed:

(1) during any proceeding conducted by the State Office of Administrative Hearings, to the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

(2) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal, if the information is necessary for preparation for, or a presentation in, the proceeding;

(3) to an entity in another jurisdiction that:

(A) licenses or disciplines pharmacists or pharmacies; or

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\(^3\)We 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 those records contain substantially different types of information than that submitted to this office.
(B) registers or disciplines pharmacy technicians or pharmacy technician trainees;

(4) to a pharmaceutical or pharmacy peer review committee as described under Chapter 564;

(5) to a law enforcement agency;

(6) to a person engaged in bona fide research, if all information identifying a specific individual has been deleted; or

(7) to an entity that administers a board-approved pharmacy technician certification examination.

Occ. Code § 565.055. You state Exhibit D was compiled by the board in connection with an investigation of an alleged violation of the Texas Pharmacy Act or board rule. You inform us the requestor is not entitled to this information pursuant to section 565.055(c). Therefore, based on your representations and our review, we find Exhibit D is confidential under section 565.055(b) of the Occupations Code, and must be withheld under section 552.101 of the Government Code. See Open Records Decision No. 474 at 2-3 (1987) (construing predecessor statute).

Section 552.101 of the Government Code also encompasses section 555.001 of the Occupations Code. Section 555.001 provides, in relevant part:

(d) Information regarding the home address or home telephone number of a person licensed under this subtitle, including a pharmacy owner, is confidential and not subject to disclosure under [the Act], but each person licensed or registered must provide the board with a business address or address of record that is subject to disclosure under [the Act].

Occ. Code § 555.001(d). You state the information you have marked in Exhibit C consists of the home address and home telephone number of a pharmacy owner. We understand this information is not the business address or address of record provided to the board. Based on your representations and our review, we find the board must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 555.001(d) of the Occupations Code.


As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.
Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the board must withhold the public citizen's date of birth you have marked in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the board must withhold: (1) Exhibit D under section 552.101 of the Government Code in conjunction with section 565.055(b) of the Occupations Code; (2) the information you have marked under section 552.101 of the Government Code in conjunction with section 555.001(d) of the Occupations Code; and (3) public citizen's date of birth you have marked in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. The board must release the remaining information in Exhibit C.

Finally, you ask this office to issue a previous determination permitting the board to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling authorizes the board to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is a personal right that lapses at an individual's death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the board to withhold dates of birth of living individuals. This previous determination is not applicable to dates of birth belonging to deceased individuals. We also note a person or a person's authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person's privacy interests. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination is not applicable to dates of birth requested by a person or the authorized representative of a person whose date of birth is at issue. Furthermore, information filed with a court is not protected by common-law privacy. *See* Gov't Code § 552.022(a)(17); *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, this previous determination is not applicable to dates of birth contained in court-filed documents. 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 board need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7-8 (listing elements of second type of previous determination under Gov't Code § 552.301(a)).
You also ask this office to issue a previous determination that would permit the board to withhold the home address or home telephone number of a person licensed or registered by the board under section 552.101 of the Government Code in conjunction with section 555.001(d) of the Occupations Code and an investigative file of the board under section 552.101 of the Government Code in conjunction with section 565.055(b) of the Occupations Code without requesting a ruling from this office. *Id.* We decline to issue such a previous determination at this time.

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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 674780

Enc. Submitted documents

c: Requestor  
(w/o enclosures)