



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2017

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

OR2017-22109

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# 677299 (TDLR #PIR-20171055).

The Texas Department of Licensing and Regulation (the "department") received a request for a specified complaint. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 confidentiality provisions such as section 401.2535 of the Occupations Code, which provides, in relevant part, the following:

(h) All information and materials subpoenaed or compiled by the department in connection with a complaint and investigation are confidential and not subject to disclosure under [the Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

- (1) persons involved with the department in a disciplinary action against the holder of a license;
 - (2) professional speech-language pathologist and audiologist licensing or disciplinary boards in other jurisdictions;
 - (3) peer assistance programs approved by the [Texas Commission of Licensing and Regulation (the "commission")] under Chapter 467, Health and Safety Code;
 - (4) law enforcement agencies; and
 - (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.
- (i) The filing of formal charges by the department against a holder of a license, the nature of those charges, disciplinary proceedings of the department, commission, or executive director [of the department], and final disciplinary actions, including warnings and reprimands, by the department, commission or executive director [of the department] are not confidential and are subject to disclosure in accordance with [the Act].

Occ. Code § 401.2535(h), (i). You state the submitted information was gathered or created by the department in response to a complaint and related ongoing investigation. You also assert none of the exceptions to confidentiality under section 401.2535(h) are applicable in this instance and indicate none of the submitted information is subject to release under section 402.2535(i). Based on your representations and our review, we conclude the submitted information is made confidential in its entirety pursuant to section 401.2535(h) of the Occupations Code. The department must, therefore, withhold the submitted information pursuant to section 552.101 of the Government Code.¹

Finally, you ask this office to issue a previous determination permitting the department withhold information subject to section 401.2535(h) of the Occupations Code without the necessity of requesting a decision 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). Having considered your request, we decline to issue such a previous determination at this time. Accordingly, 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.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/sb

Ref: ID# 677299

c: Requestor