



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 31, 2017

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

OR2017-24835

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# 682388 (TDLR #PIR-20171214).

The Texas Department of Licensing and Regulation (the "department") received a request for information pertaining to a specified investigation. You state you have released some information. 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. Section 552.101 encompasses section 401.2535 of the Occupations Code. Chapter 401 of the Occupations Code regulates speech-language pathologists and audiologists. *See* Occ. Code §§ 401.001, *et seq.* The department investigates persons allegedly engaged in practices that violate chapter 401. *See id.* § 401.201(a-1) (stating the general powers and duties of the department). Section 401.2535 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 warning and reprimands, by the department, commission, or executive director are not confidential and are subject to disclosure in accordance with [the Act].

Id. § 401.2535(h), (i). You state the submitted information was compiled by the department pursuant to an investigation under chapter 401 of the Occupations Code. You also state the exceptions to confidentiality under section 401.2535(h) are not applicable. Based on your representations and our review, we find section 401.2535(h) of the Occupations Code is applicable to the submitted information. Therefore, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 401.2535(h) of the Occupations Code.¹

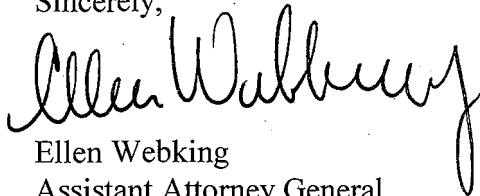
You ask this office to issue a previous determination permitting the department to withhold information under section 552.101 of the Government Code in conjunction with section 401.2535(h) of the Occupations Code without seeking a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental 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

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

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,

A handwritten signature in black ink that reads "Ellen Webking". The signature is written in a cursive style with a large, looping "E" and "W".

Ellen Webking
Assistant Attorney General
Open Records Division

EW/tdw

Ref: ID# 682388

c: Requestor