



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 23, 2018

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

OR2018-04310

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# 696895.

The Texas State Board of Pharmacy (the "board") received a request for a specified report. 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. 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

(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 the submitted information 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 the information at issue is confidential under section 565.055(b) of the Occupations Code, and

must generally be withheld under section 552.101 of the Government Code.<sup>1</sup> *See* Open Records Decision No. 474 at 2-3 (1987) (construing predecessor statute).

We note, however, the submitted information includes the fingerprint of the requestor. Section 560.003 of the Government Code provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). However, section 560.002 of the Government Code provides, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Accordingly, we find a person or the person’s authorized representative has a right of access under section 560.002(1)(A) to that person’s biometric information. In this instance, the requestor has a right of access to the submitted fingerprint pursuant to section 560.002(1)(A).

Therefore, there is a conflict between the confidentiality mandated under section 565.055(b) of the Occupations Code and the right of access provided to this requestor under section 560.002 of the Government Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See id.* § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.). In this instance, we find section 565.055(b) of the Occupations Code generally applies to information in the board’s investigation files. Section 560.002 of the Government Code, however, applies specifically to biometric identifier information. Accordingly, we find the right of access provided to this requestor under section 560.002 prevails over the general confidentiality of section 565.055(b) of the Occupations Code. Thus, the requestor’s fingerprint must be released to him pursuant to section 560.002 of the Government Code.

In summary, the requestor’s fingerprint must be released to him pursuant to section 560.002 of the Government Code. The board must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 565.055(b) of the Occupations Code.

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.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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](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, appearing to read 'Jahna Ward', with a stylized flourish at the end.

Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/tdw

Ref: ID# 696895

Enc. Submitted documents

c: Requestor  
(w/o enclosures)