



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2019

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

OR2019-03958

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# 749595 (PIR# 20191132).

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 claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. This section encompasses section 202.509 of the Occupations Code, which provides, in part:

- (a) Except as provided by Subsections (b), (d), and (f) of this section, Section 202.2031, and Section 202.2032, a complaint, report, investigation file, or other investigative information in the possession of or received or gathered by the department or an employee or agent of the department that relates to a license holder, a license application, or a criminal investigation or proceeding is privileged, confidential, and not subject to discovery, subpoena, or any other legal method of compelling release.

Occ. Code § 202.509(a).¹ Section 202.509 also provides for the release of information relating to a complaint under specified circumstances and to certain persons. *See id.* § 202.509(b), (d), (e), (f). However, you explain the release provisions of section 202.509(b) do not apply. Further, we understand the remaining release provisions do not apply to the submitted information. You state the submitted information consists of complaint information made confidential pursuant to section 202.509(a). Accordingly, based upon these representations and our review, we conclude the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 202.509(a) of the Occupations Code.

You also ask this office to issue a previous determination that would permit the department to withhold information under section 552.101 of the Government Code in conjunction with section 202.509 of the Occupations Code without requesting 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 decline to issue such a previous determination at this time. Therefore, 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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/som

¹The 85th Legislature transferred the regulation of podiatry from the former Texas State Board of Podiatric Medical Examiners to the department effective September 1, 2017. *See* Act of May 29, 2017, 85th Leg., R.S., ch. 282, § 63, 2017 Tex. Gen Laws 533.

Ref: ID# 749595

Enc. Submitted documents

c: Requestor
(w/o enclosures)