



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2019

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2019-05132

Dear Mr. Miles:

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# 751604 (HHSC Reference No. 17014).

The Texas Health and Human Services Commission (the "commission") received a request for all complaints filed against a named individual during a defined period of time. You state the commission will release some of the requested. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹We note the commission failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the city's violation of section 552.301 in requesting this decision.

²We 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.

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 503.2545 of the Occupations Code, which provides in pertinent part as follows:

(h) All information and materials subpoenaed or compiled by the [Texas State Board of Examiners of Professional Counselors (the “board”)] in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board 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 board in a disciplinary action against the holder of a license;

(2) professional counselor licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the board 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.

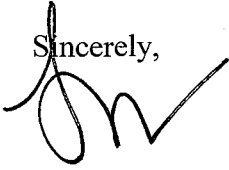
(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with [the Act].

Occ. Code § 503.2545(h), (i). You state, and the documents at issue reflect, that the submitted information was compiled by the board in connection with the board’s investigation of the named licensed professional counselor. You state none of the exceptions to confidentiality under subsection 503.2545(h) are applicable in this instance. You also indicate no information exists that is subject to subsection 503.2545(i). Upon review, we agree the submitted information is confidential under subsection 503.2545(h). Therefore, the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with subsection 503.2545(h) 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.

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, appearing to read 'Jahanna Ward', with a stylized flourish at the end.

Jahanna Ward
Assistant Attorney General
Open Records Division

JW/gw

Ref: ID# 751604

Enc. Submitted documents

c: Requestor
(w/o enclosures)