



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 8, 2019

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

OR2019-09381

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# 757436 (PIR# 20192267).

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 representative sample of information.<sup>1</sup>

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:

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<sup>1</sup>We 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.

(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).<sup>2</sup> 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). Subsection (b) requires the department to release certain information that would otherwise be protected by subsection (a) when the information is requested by the license holder or the license holder's attorney and the board intends to offer the information into evidence at the contested case hearing on the complaint. *Id.* § 202.509(b). In this case, the requestor is a representative of the license holder. However, the department states in this instance, no contested case has been filed against this license holder. Upon review, therefore, we agree subsection (b) does not apply to the requested information. 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.<sup>3</sup>

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](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

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<sup>2</sup>The 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.

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 "Michelle Garza", written over a faint grid background.

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/jxd

Ref: ID# 757436

Enc. Submitted documents

c: Requestor  
(w/o enclosures)