



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 31, 2019

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

OR2019-21118

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# 778240 (Ref. No. 18305).

The Texas Health and Human Services Commission (the "commission") received a request for certain information pertaining to a certain investigation.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

¹We note the requestor modified her request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²We note, and you acknowledge, the commission did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses confidentiality provisions. You assert that a portion of the submitted information is made confidential by section 502.2045(h) of the Occupations Code. Section 502.2045 provides, in pertinent part:

(h) All information and materials subpoenaed or compiled by the [Board of Examiners of Marriage and Family Therapists (the “board”)] 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 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) marriage and family therapist 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 § 502.2045(h), (i). You state the information at issue was “obtained and compiled [by the board]...in connection with the investigation of a complaint concerning a licensed marriage and family therapist” by the board. You also inform us none of the exceptions to confidentiality under section 502.2045(h) or 502.2045(i) are applicable in this instance. We therefore conclude the information you have indicated is confidential under section 502.2045(h) of the Occupations Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 503.2545 of the Occupations Code, which provides, in pertinent part:

(h) All information and materials subpoenaed or compiled by the [Texas State Board of Examiners of Professional Counselors (the “counselors’ board”)] 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 [counselors’] 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 [counselors’] 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 [counselors’] 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 [counselors’] board against a holder of a license, the nature of those charges, disciplinary proceedings of the [counselors’] board, and final disciplinary actions, including warnings and reprimands, by the [counselors’] board are not confidential and are subject to disclosure in accordance with [the Act].

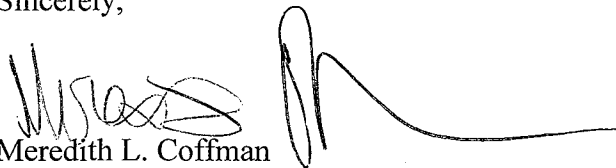
Occ. Code § 503.2545(h), (i). You state, and the documents at issue reflect, that the remaining information was compiled by the counselors’ board in connection with the counselors’ board’s investigation of the named licensed professional counselor. You state none of the exceptions to confidentiality under section 503.2545(h) or 503.2545(i) are applicable in this instance. Upon review, we agree the information at issue is confidential under section 503.2545(h). Therefore, the commission must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 503.2545(h) of the Occupations Code.

In summary, the commission must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 502.2045(h) of the Occupations Code. The commission must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 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 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/gw

Ref: ID# 778240

Enc. Submitted documents

c: Requestor
(w/o enclosures)