



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2019

Ms. Elissa Mazza
Staff Attorney
Texas Board of Professional Engineers
1917 South Interstate 35
Austin, Texas 78741-3702

OR2019-30725

Dear Ms. Mazza:

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# 794389.

The Texas Professional Board of Engineers (the "board") received a request for electronic communications between a named sender and any of seven named individuals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 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 protected by other statutes. Section 1001.252 of the Occupations Code provides in part:

- (a) The board shall adopt rules that permit the board to receive and investigate a confidential complaint against a person who may have violated this chapter or Chapter 1071. The board shall maintain the confidentiality of the complaint during the investigation.

¹ Although the board raises sections 552.102 through 552.110 and 552.112 through 552.158 of the Government Code, it makes no arguments to support these exceptions. Therefore, we assume the board has withdrawn its claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

Act of May 27, 2019, 86th Leg., R.S., H.B. 1523, § 1.27 (to be codified at Occ. Code § 1001.252). Section 139.11 of title 22 of the Texas Administrative Code provides:

(a) The board shall initiate or receive and investigate a complaint against a license holder or other person who may have violated the [Texas Practice Engineering Act] or board rules.

(b) The board shall maintain the confidentiality of the complaint from receipt through the investigation of the complaint. The complaint information will no longer be confidential after formal charges are filed with the State Office of Administrative Hearings or after the investigative file is closed. The following documents in an investigative file are releasable to a respondent or an attorney representing the respondent before the [b]oard during the informal resolution process of a complaint: copies of the original complaint documentation; copies of communications to or from the [b]oard and the complainant, the respondent, witnesses, technical experts used by the [b]oard to advise on the complaint issues, and private or public entities regarding requests for records, documents, or information regarding the complaint; and witness interview reports.

22 T.A.C. § 139.11(a), (b). Both section 1001.252(a) of the Occupations Code and section 139.11 of title 22 of the Texas Administrative Code require the board to maintain the confidentiality of complaint information during the investigation of the complaint. You state the submitted information consists of information provided to the board relating to pending enforcement cases being investigated by the board. We have no indication formal charges have been filed with the State Office of Administrative Hearings in these cases and the information at issue does not fall within the categories of documents that would be releaseable under section 139.11(b). Based on your representations and our review of the information at issue, we find the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 1001.252(a) of the Occupations Code.² We note that complaint information is no longer confidential once formal charges have been filed or once the investigation is closed. *See generally* Occ. Code § 1001.252.

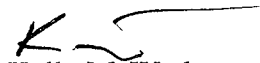
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

² As our ruling is dispositive, we need not address your remaining arguments against disclosure.

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kelly McWethy
Assistant Attorney General
Open Records Division

KM/gw

Ref: ID# 794389

c: Requestor