



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Ms. Megan G. Holloway
Assistant General Counsel
Texas State Board of Pharmacy
333 Guadalupe Street, Suite 3-500
Austin, Texas 78701-3943

OR2019-36129

Dear Ms. Holloway:

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# 802861.

The Texas State Board of Pharmacy (the "board") received a request for all information pertaining to a named individual. You state you have released some of the requested information. You state you will redact information under section 552.147(b) of the Government Code.¹ You also state you will redact information pursuant to Open Records Decision No. 684 (2009) and dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2017-20671 (2017).² You claim some of the submitted information is excepted from disclosure under sections 552.101 and

¹ Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

² Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision. Open Records Letter No. 2017-20671 authorizes the board to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general decision.

552.118 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

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 information made confidential by other statutes, such as section 565.055 of the Occupations Code. Section 565.055 provides:

(a) The board or the board’s authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.

(b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) any means of legal compulsion for release, including disclosure, discovery, or subpoena, to anyone other than the board or a board employee or board agent involved in discipline of a license holder.

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed:

(1) during any proceeding conducted by the State Office of Administrative Hearings, to the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

(2) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal, if the information is necessary for preparation for, or a presentation in, the proceeding;

³ We note the board did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov’t Code § 552.301(b). Nonetheless, because sections 552.101 and 552.118 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

⁴ 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 that those records contain substantially different types of information than that submitted to this office.

- (3) to an entity in another jurisdiction that:
 - (A) licenses or disciplines pharmacists or pharmacies; or
 - (B) registers or disciplines pharmacy technicians or pharmacy technician trainees;
- (4) to a pharmaceutical or pharmacy peer review committee as described under Chapter 564;
- (5) to a law enforcement agency;
- (6) to a person engaged in bona fide research, if all information identifying a specific individual has been deleted; or
- (7) to an entity that administers a board-approved pharmacy technician certification examination.

Occ. Code § 565.055. You state the information you marked was compiled by the board in connection with an investigation of an alleged violation of the Texas Pharmacy Act or board rule. You inform us the requestor is not entitled to this information pursuant to section 565.055(c). Therefore, based upon your representations and our review, we find the information at issue is confidential under section 565.055(b) of the Occupations Code, and must be withheld under section 552.101 of the Government Code.⁵ *See* Open Records Decision No. 474 at 2-3 (1987) (construing predecessor statute).

Section 552.101 of the Government Code also encompasses section 555.001 of the Occupations Code. Section 555.001 provides, in relevant part:

- (d) Information regarding the home address or home telephone number of a person licensed under this subtitle, including a pharmacy owner, is confidential and not subject to disclosure under [the Act], but each person licensed or registered must provide the board with a business address or address of record that is subject to disclosure under [the Act.]

Occ. Code § 555.001(d). You state the information you marked consists of the home address and home telephone number of a licensee or a pharmacy owner. We understand this information is not the business address or address of record provided to the board. Based on your representations and our review, we find the board must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 555.001(d) of the Occupations Code.

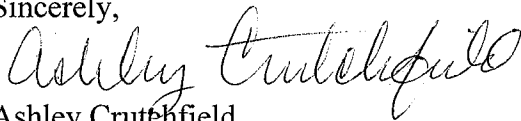
⁵ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, the board must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 565.055(b) of the Occupations Code. The board must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 555.001(d) of the Occupations Code. The board must release the remaining information.

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 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,



Ashley Crutehfield
Assistant Attorney General
Open Records Division

AC/mo

Ref: ID# 802861

Enc. Submitted documents

c: Requestor
(w/o enclosures)