



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 10, 2020

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

OR2020-03905

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# 810782.

The Texas State Board of Pharmacy (the "board") received a request for certain information relating to a specified prescriber of controlled substances. You state the board does not maintain information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.118 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 section 481.076(a) of the Health and Safety Code, which provides, "[t]he board may not permit any person to have access to information submitted to the board under Section 481.074(q) or 481.075 except" certain enumerated individuals and entities for purposes specified in the statute. Health & Safety Code § 481.076(a); *see id.* §§ 481.074(q) (requiring dispensing pharmacists to send certain

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the board. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

² 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.

prescription information to board within specified period of time), .075(i)(3) (same). The board informs us the responsive information was submitted to it under section 481.074(q), 481.075, “and/or” section 481.076. The board also states the requestor is not entitled to access to the information at issue under section 481.076. Based upon these representations, we agree the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 481.076(a) of the Health and Safety Code.³

Finally, you ask this office to issue a previous determination permitting the board to withhold information collected under sections 481.075 and/or 481.0755 of the Health and Safety Code under section 552.118 of the Government Code without the necessity of requesting a decision under section 552.301 of the Government Code. *See* Gov’t Code § 552.301(a) (allowing a 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. Accordingly, 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,



Kimbell Kesling
Attorney
Open Records Division

KK/mo

Ref: ID# 810872

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.