



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 13, 2020

Ms. Yvette Yarbrough  
Assistant General Counsel  
Texas Medical Board  
P.O. Box 2018  
Austin, Texas 78768-2018

OR2020-04641

Dear Ms. Yarbrough:

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# 811667 (TMB Reference #30697).

The Texas Medical Board (the "board") received a request for four categories of information pertaining to complaints involving a named individual. You state the board does not have information responsive to a portion of the request.<sup>1</sup> You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

---

<sup>1</sup> 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).

<sup>2</sup> We note the board did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See Gov't Code* § 552.301(e). Nonetheless, because sections 552.101 and 552.107 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of these exceptions to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>3</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 that those records contain substantially different types of information than that submitted to this office.

The requestor is Texas State Representative Bill Zedler (“Representative Zedler”). Section 552.008 of the Government Code grants access to requested information, including confidential information, to individual members, agencies, or committees of the Texas Legislature. Section 552.008 provides, in part, as follows:

(a) The [Act] does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

- (1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;
- (2) the information be labeled as confidential;
- (3) the information be kept securely; or
- (4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

...

(c) This section does not affect:

- (1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;

- (2) the procedures under which the information is obtained under other law; or
- (3) the use that may be made of the information obtained under other law.

Gov't Code § 552.008(a)-(b), (c). In his request letter, Representative Zedler represents his request was made pursuant to section 552.008 of the Government Code. The board acknowledges section 552.008 provides the Act does not grant authority to withhold information from individual members, agencies, or committees of the legislature if the information is going to be used for legislative purposes. However, the board states the submitted information consists of complaint documents in its possession, and asserts legislative access to this information is limited by section 154.055 of the Occupations Code, which provides as follows:

(a) On request from a legislative committee created under Subchapter B, Chapter 301, Government Code, the board shall release all information regarding a complaint against a physician to aid in a legitimate legislative inquiry. The board may release the information only to the members of the committee.

(b) In complying with a request under Subsection (a), the board may not identify the complainant or the patient and may reveal the identity of the affected physician only to the members of the committee.

Occ. Code § 154.055; *see also City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003) (legislature's intent is determined from entire act and not just isolated portions). Section 154.055(a) states the board shall release information regarding a board complaint to a legislative committee created under chapter 301 of subchapter B of the Government Code. Occ. Code § 154.055(a). The board asserts, and we agree, requiring disclosure of complaints under section 552.008 of the Government Code would yield the absurd result of providing a greater access to complaints to legislators making requests pursuant to section 552.008 than to legislative committees to whom the Legislature intended to grant limited access. *See id.* § 154.055(b) (board may not release identity of complainant or patient to a legislative committee); *see also Hernandez v. Ebrom*, 289 S.W.3d 316, 318 (Tex. 2009) (unambiguous statutory language is interpreted according to its plain language unless such an interpretation would lead to absurd results); Attorney General Opinion GA-0876 (2011). Consequently, we determine legislative access to complaint information is governed by section 154.055 of the Occupations Code. Representative Zedler does not reference section 154.055(a) of the Occupations Code in his request or assert the request is from a legislative committee. Therefore, we conclude the requestor cannot obtain the submitted information under section 552.008 of the Government Code and the board is not required to release it in this instance.<sup>4</sup>

---

<sup>4</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted 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,



Kimbell Kesling  
Attorney  
Open Records Division

KK/gw

Ref: ID# 811667

Enc. Submitted documents

c: Requestor  
(w/o enclosures)