



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 3, 2020

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

OR2020-06610

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# 814985 (TMB Reference Number 30705).

The Texas Medical Board (the "board") received a request for certain information pertaining to specified physicians, physician assistants, and acupuncturists, including names, telephone numbers, fax numbers, and e-mail addresses.<sup>1</sup> You state the board is withholding personal e-mail addresses pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup> You state the board sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

<sup>2</sup> Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

<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.

Initially, we note the submitted license numbers are not responsive to the instant request because they do not consist of the requested information. This ruling does not address the public availability of any information that is not responsive to the request and the board is not required to release such information in response to this request.

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. Section 552.101 encompasses information that other statutes make confidential. Section 156.006 of the Occupations Code provides, in relevant part, as follows:

(a) Each license holder shall submit to the board telephone numbers, fax numbers, and e-mail addresses, if available and as appropriate, that the board may use to contact the license holder in an emergency.

...

(d) The information provided by a license holder under this section is confidential and is not subject to disclosure under [the Act]. The board may not publish, release, or make available information provided by a license holder under this section except as provided by Subsection (e).

Occ. Code § 156.006(a), (d). You state the telephone numbers, fax numbers, and e-mail addresses in Exhibit 2 belong to licensed physicians and were provided to the board pursuant to section 156.006(a). Upon review, we find the board must withhold the telephone numbers, fax numbers, and e-mail addresses in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 156.006(d) of the Occupations Code.<sup>4</sup>

Section 552.139 of the Government Code provides, in relevant part, as follows:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Gov’t Code § 552.139(a). Section 2059.055 of the Government Code provides, in relevant part, as follows:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

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

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

*Id.* § 2059.055(b). You state the physician assistant and acupuncturist e-mail addresses in Exhibits 3 and 4 are “used as unique user codes for physician assistants [and acupuncturists] to access the [board’s] secure computer systems.” Accordingly, you state these e-mail addresses are part of the board’s computer network security and “safeguard access to sensitive and confidential information held in the secure online systems of the [board].” Based upon these representations and our review of the information, we find the board has demonstrated the information at issue relates to computer network security, restricted information under section 2059.055, or to the design, operation, or defense of the computer network as contemplated by section 552.139(a). Accordingly, the board must withhold the e-mail addresses we marked in Exhibits 3 and 4 under section 552.139(a) of the Government Code.<sup>5</sup>

Section 552.101 of the Government Code also encompasses information made confidential by other statutes. Section 204.254 of the Occupations Code provides as follows:

A complaint, adverse report, investigation file, other report, or other investigative information in the possession of or received or gathered by the physician assistant board or a board employee or agent relating to a license holder, a license application, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the board or a board employee or agent involved in license holder discipline.

Occ. Code § 204.254. Section 204.254 applies to investigatory records gathered by the board. Exhibit 3 consists of contact information for several physician assistants. Because you have failed to explain how the information at issue relates to an investigation contemplated by section 204.254, we find that the remaining responsive information in Exhibit 3 is not confidential under section 204.254 of the Occupations Code and it may not be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as chapter 205 of the Occupations Code. Chapter 205 governs the practice of acupuncture and the licensure of acupuncturists. Section 205.3544 of the Occupations Code provides the board “shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by section 164.007(c) [of the Occupations Code].” *See id.* § 205.3544. You state the remaining

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<sup>5</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

responsive information in Exhibit 4 is subject to section 205.3544. However, you do not inform us, and the information at issue does not reflect, that the board has conducted an informal proceeding with regard to any of the licensees at issue. *See id.* § 205.3541 *et seq.* (setting forth requirements for informal proceedings). Thus, because the board has not demonstrated that the information at issue is an investigation file relating to a license holder in an informal proceeding, we find the remaining responsive information in Exhibit 4 is not confidential under section 205.3544 of the Occupations Code and it may not be withheld under section 552.101 of the Government Code on that basis.

In summary, the board must withhold the telephone numbers, fax numbers, and e-mail addresses in Exhibit 2 under section 552.101 of the Government Code in conjunction with section 156.006(d) of the Occupations Code. The board must withhold the e-mail addresses we marked in Exhibits 3 and 4 under section 552.139(a) of the Government Code. The board must release the remaining responsive 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/mo

Ref: ID# 814985

Enc. Submitted documents

c: Requestor  
(w/o enclosures)