



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2020

Mr. Brad Bowman
General Counsel
Texas Department of Licensing & Regulation
P.O. Box 12157
Austin, Texas 78711

OR2020-09534

Dear Mr. Bowman:

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# 820529 (PIR# 202001414).

The Texas Department of Licensing & Regulation (the "department") received a request for information pertaining to a specified investigation.¹ You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

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 made confidential by other statutes, such as section 51.254 of the Occupations Code, which provides, in part:

(c) Except as otherwise provided by this section, a complaint and investigation concerning a person to whom this section applies and all

¹ The department 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.3d 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).

² We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

information and materials subpoenaed or compiled by the department in connection with the complaint and investigation are confidential and not subject to:

(1) disclosure under [the Act.]

...

(i) Notices of alleged violation issued by the department against respondents, disciplinary proceedings of the department, . . . and final disciplinary actions, including warnings and reprimands, by the department . . . are not confidential and are subject to disclosure in accordance with [the Act].

Occ. Code § 51.254(c)(1), (i). Section 51.254(b) lists the professions to which section 51.254 applies and provides, in part:

(b) This section applies to health-related professions regulated by this state the administration of which is assigned to the department by law, including the following professions:

...

(9) podiatrists regulated under Chapter 202[.]

Id. § 51.254(b)(9). You state the submitted information consists of a complaint initiated by the requestor alleging a violation of law or an administrative rule regarding the conduct of a podiatrist. Further, you explain the submitted information includes information and documentation compiled by the department's Enforcement Division during its investigation related to the alleged violation and the Enforcement Division's analyses of the evidence. You state the provisions in section 51.254(d) do not apply because the requestor is not one of the listed parties. *See id.* § 51.254(d). Further, you state none of the submitted information is a type of information contemplated by section 51.254(i). *See id.* § 51.254(i). Based on your representations and our review, we conclude the submitted information is confidential under section 51.254. Therefore, the department must withhold the submitted information under section 552.101 in conjunction with section 51.254(c).

You also ask this office to issue a previous determination permitting the department to withhold complaint and investigation information pursuant to section 552.101 of the Government Code in conjunction with section 51.254 of the Occupations Code without seeking a ruling from this office. *See* 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/gw

Ref: ID# 820529

Enc. Submitted documents

c: Requestor
(w/o enclosures)