



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 23, 2020

Ms. Waneta Lamas
Mr. Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2020-11637

Dear Ms. Lamas and 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# 822819 (TDLR# PIR-202001904).

The Texas Department of Licensing and Regulation (the "department") received a request for information pertaining to specified investigations at a specified type of business.¹ You state the department will withhold information pursuant to section 552.130(c) of the Government Code and Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified the City of Austin, the City of Dallas, the City of Houston, the

¹ You state the department sought and received clarification of the requested information. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

² Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

City of Inver Grove Heights, the City of Longview, the Montgomery County Sheriff's Office, the Office of the Attorney General (the "OAG"), the Texas Department of Public Safety ("DPS"), the Tarrant County Sheriff's Office, and the Texas Medical Board of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released.³ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments 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." *Id.* § 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 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:

...

³ As of the date of this letter, we have received comments from only DPS and the OAG explaining why some of the submitted information should not be released to the requestor.

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.

(6) massage therapists regulated under Chapter 455[.]

Id. § 51.254(b)(6). You state the submitted information consists of investigations regarding violations of law or administrative rules regarding the conduct of message therapists. Further, you explain the submitted information includes information and documentation compiled by the department's Enforcement Division during investigations related to the alleged violations 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, we note 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 of the Government Code in conjunction with section 51.254(c) of the Occupations Code.⁵

You also ask this office to issue a previous determination that would permit the department to withhold information under section 552.101 of the Government Code in conjunction with section 51.254 of the Occupations Code without requesting a ruling from this office. *See Gov't Code* § 552.301(a) (allowing 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. Therefore, 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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/eb

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

Ref: ID# 822819

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)