



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 28, 2020

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

OR2020-14831

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# 829298 (Ref. No. PIR-202002194).

The Texas Department of Licensing and Regulation (the "department") received a request for information pertaining to a specified entity, including information pertaining to complaints and disciplinary actions.<sup>1</sup> You state the department is redacting social security numbers pursuant to section 552.147(b) of the Government Code and e-mail addresses subject to section 552.137 pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You also state the department has released some information to the requestor, including information subject to section 51.254(i) of the Occupations Code. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the

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<sup>1</sup> You state, and provide documentation demonstrating, the department sought and received clarification of the information requested. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup> Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note some of the information at issue is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information contains a completed investigation that is subject to section 552.022(a)(1). The department must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. Although you assert some of the information subject to section 552.022(a)(1) is excepted from disclosure under section 552.111 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold any portion of the completed investigation subject to section 552.022(a)(1) under section 552.111 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Civil Procedure are “other law” within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider your assertion of the attorney work product privilege under rule 192.5 of the Texas Rules of Civil Procedure for the information at issue. Further, because section 552.101 of the Government Code makes information confidential under the Act, we will consider your argument under this section for the information subject to section 552.022(a)(1) of the Government Code. We will also consider your arguments for the information not subject to 552.022.

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 information and materials subpoenaed or compiled by the department in

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

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 pertinent part:

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:

...

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

*Id.* § 51.254(b)(6). You state the submitted information consists of the case files pertaining to investigations regarding violations of law or administrative rules regarding the conduct of massage 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 information at issue 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 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.<sup>4</sup>

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

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

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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/jxd

Ref: ID# 829298

c: Requestor