



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 20, 2020

Ms. Megan G. Holloway
Deputy General Counsel
Texas State Board of Pharmacy
333 Guadalupe Street, Suite 3-500
Austin, Texas 78701-3943

OR2020-20902

Dear Ms. Holloway:

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# 840580 (TSBP Request No. B.6.4.20).

The Texas State Board of Pharmacy (the "board") received a request for information pertaining to a specified investigation involving the requestor's clients. You state the board will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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. This section encompasses information made confidential by other statutes, such as section 565.055 of the Occupations Code. Section 565.055 provides:

(a) The board or the board's authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.

¹ We assume that 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.

(b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) any means of legal compulsion for release, including disclosure, discovery, or subpoena, to anyone other than the board or a board employee or board agent involved in discipline of a license holder.

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed:

(1) during any proceeding conducted by the State Office of Administrative Hearings, to the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

(2) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal, if the information is necessary for preparation for, or a presentation in, the proceeding;

(3) to an entity in another jurisdiction that:

(A) licenses or disciplines pharmacists or pharmacies; or

(B) registers or disciplines pharmacy technicians or pharmacy technician trainees;

(4) to a pharmaceutical or pharmacy peer review committee as described under Chapter 564;

(5) to a law enforcement agency;

(6) to a person engaged in bona fide research, if all information identifying a specific individual has been deleted; or

(7) to an entity that administers a board-approved pharmacy technician certification examination.

Occ. Code § 565.055. The board states the submitted information was compiled by the board in connection with an investigation of an alleged violation of the Texas Pharmacy Act or board rule. The board informs us the requestor is not entitled to this information pursuant to section 565.055(c). Therefore, based upon the board's representations and our review, we find the submitted information is confidential under section 565.055(b) of the

Occupations Code, and must be withheld under section 552.101 of the Government Code.² See Open Records Decision No. 474 at 2-3 (1987) (construing predecessor statute).

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/mo

Ref: ID# 840580

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining arguments against disclosure.