



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2020

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

OR2020-24740

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# 846150 (Ref. No. 31323).

The Texas Medical Board (the "board") received a request for information pertaining to the requestor. You state the board has released some of the requested information. You state the board is withholding some information pursuant to the previous determination issued in Open Records Letter No. 2007-03117 (2007).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹ Open Records Letter No. 2007-03117 authorizes the board to withhold investigative information that is in the possession of or was received or gathered by the board during the investigation of a license holder under section 552.101 of the Government Code in conjunction with section 164.007(c) of the Occupations Code.

² 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.

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 exception encompasses section 167.010 of the Occupations Code, which is part of the Medical Practice Act, subtitle B of title 3 of the Occupations Code. Section 167.010 of the Occupations Code provides as follows:

(a) Each referral, proceeding, report, investigative file, record, or other information received, gathered, created, or maintained by the [Texas Physician Health Program (the “program”)] or its employees, consultants, work site monitors, or agents relating to a physician or physician assistant is privileged and confidential and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other means of legal compulsion for release to any person except as provided by this chapter.

(b) Notwithstanding Subsection (a), the program may report to the board or the physician assistant board, as appropriate, the name and pertinent information relating to impairment of a physician or physician assistant.

(c) Notwithstanding Subsection (a), the program shall make a report to the board or the physician assistant board, as appropriate, regarding a physician or physician assistant if the medical director or the governing board determines that the physician or physician assistant poses a continuing threat to the public welfare. If requested by the board or the physician assistant board, a report under this subsection must include all information in the possession or control of the program.

Occ. Code § 167.010. We note section 167.005(c) of the Occupations Code provides that “[t]he program is administratively attached to the board.” *Id.* § 167.005(c). You state the submitted information consists of records maintained by the program relating to a physician. Further, you state none of the exceptions apply to this information. Thus, we find the information at issue is confidential under section 167.010 of the Occupations Code, and the board must withhold the submitted information under section 552.101 of the Government Code on that basis.³

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

³ As our ruling is dispositive, we need not address your remaining argument against disclosure.

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# 846150

Enc. Submitted documents

c: Requestor
(w/o enclosures)