



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2020

Mr. Patrick Hyde
General Counsel
Texas State Board of Examiners of Psychologists
333 Guadalupe Street, Suite 2-450
Austin, Texas 78701

OR2020-25634

Dear Mr. Hyde:

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# 846266.

The Texas State Board of Examiners of Psychologists (the "board") received a request for the disciplinary history for a named individual and a specified agreed order. The board claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. Additionally, the board provides documentation showing it notified an individual of the right to submit comments to this office as to why the submitted information should not be released.¹ *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 information.

Initially, we note the board states it intends to withhold some of the requested information pursuant to the previous determination issued to it in Open Records Letter No. 2003-6711 (2003). In that decision, we determined information compiled by the board in connection with a complaint and investigation of a license holder, where the requestor does not fall into any of the five exceptions enumerated in section 501.205(b) of the Occupations Code, is confidential under section 501.205 of the Occupations Code and must be withheld under section 552.101 of the Government Code on that basis. However, the 86th Legislature repealed former section 501.205 effective September 1, 2019. Act of May 25, 2019, 86th Leg., R. S., H.B. 1501, § 2.113. Therefore, the law on which Open Records Letter No. 2003-6711 was based has changed. Accordingly, the board may not rely on Open Records

¹ We received and considered comments from the third party.

Letter No. 2003-6711 as a previous determination and withhold any of the requested information on that ground. *See* Open Records Decision No. 673 (2001).

Section 552.101 of the Government Code excepts from required public 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 statutes, such as section 507.205 of the Occupations Code. Section 507.205(a) provides the following:

(a) Except as provided by Subsection (b), a complaint and investigation and all information and materials compiled by the [Texas Behavioral Health Executive Council (the “executive council”)]² in connection with the complaint and investigation are not subject to:

(1) disclosure under Chapter 552, Government Code[.]

...

(b) A complaint or investigation subject to Subsection (a) and all information and materials compiled by the executive council in connection with the complaint may be disclosed to:

(1) the executive council and executive council employees or agents involved in license holder discipline;

(2) a party to a disciplinary action against the license holder or that party’s designated representative;

(3) the board of the applicable profession;

(4) a law enforcement agency;

(5) a governmental agency, if:

(A) the disclosure is required or permitted by law; and

(B) the agency obtaining the disclosure protects the identify of any patient whose records are examined; or

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

² HB 1501 of the 86th Legislature created the executive council and consolidated the Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, the Texas State Board of Examiners of Psychologists, and the Texas State Board of Social Worker Examiners under the executive council. *See* Act of May 25, 2019, 86th Leg., R.S., H.B. 1501.

Occ. Code § 507.205(a)(1), (b). You state the submitted information was compiled by the executive council in connection with an investigation of a named licensed psychologist.³ We have no indication the requestor is an individual or a representative of an entity listed in subsection 507.205(b). Based upon these representations and our review, we conclude the submitted information is confidential pursuant to section 507.205(a) of the Occupations Code. Accordingly, the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 507.205(a) of the Occupations Code.⁴

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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/be

Ref: ID# 846266

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

³ We note we asked the board to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). On behalf of the board, we have received and considered the correspondence sent by the executive council pursuant to that request.

⁴ As our ruling is dispositive, we need not address the board's remaining argument against disclosure of this information.