



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2020

Mr. Patrick Hyde
General Counsel
Texas Behavioral Health Executive Council
333 Guadalupe Street, Suite 3-900
Austin, Texas 78701

OR2020-31179

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# 857586.

The Texas Behavioral Health Executive Council (the "council") received a request for information, including complaints, investigations, and disciplinary records related to a named licensed professional counselor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the council 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. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments on behalf of the notified individual. We have considered the submitted arguments and reviewed the submitted information.

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." *Id.* § 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 [council] 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.

Occ. Code § 507.205(a)(1), (b). You state the submitted information was compiled by the council in connection with complaints or investigations of a named licensed professional counselor. 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 council must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 507.205(a) of the Occupations Code.¹

Finally, you request this office issue a "previous determination" that would permit the council in the future to withhold from disclosure records that are subject to section 552.101 of the Government Code in conjunction with section 507.205 of the Occupations Code without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time. Accordingly, 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.

¹ As our ruling is dispositive, we need not address the interested individual's argument against disclosure of this information.

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jxd

Ref: ID# 857586

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)