



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 21, 2020

Ms. Mia Settle Vinson  
Open Records Attorney  
Texas Department of Licensing and Regulation  
P.O. Box 12157  
Austin, Texas 78711

OR2020-32004

Dear Ms. Vinson:

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# 858145 (PIR# 202003507).

The Texas Department of Licensing and Regulation (the "department") received a request for any information pertaining to a specified case.<sup>1</sup> The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the department states it notified the Austin Police Department ("APD") of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released.<sup>2</sup> *See* Gov't Code §§ 552.304, .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the claimed exception and reviewed the submitted information.

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<sup>1</sup> The department states, and provides documentation demonstrating, it sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

<sup>2</sup> As of the date of this letter, we have not received comments from APD.

Section 552.101 of the Government Code exempts from public 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 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). The department states the submitted information consists of the case file pertaining to an investigation regarding violations of law or administrative rules regarding the conduct of massage therapists. Additionally, the department explains the submitted information includes information and documentation compiled by the department’s Enforcement Division during an investigation related to the alleged violations and the Enforcement Division’s analyses of the evidence. Further, the department states 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). Furthermore, 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 upon these 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.

The department also asks 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 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/be

Ref: ID# 858145

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: 1 Third Party  
(w/o enclosures)