February 15, 2022

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

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# 930628.

The Texas Behavioral Health Executive Council (the “council”) received a request for information pertaining to a specified complaint against a named licensed professional counselor. You state the council has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you provide documentation showing the council notified the named 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 considered the exception you claim 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

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1 The council states it sought and received clarification of the information requested. See Gov’t Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also City of Dallas v. Abbott, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).
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 identity 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 and investigations of the named licensed professional counselor. 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.

You also ask this office to issue a previous determination permitting the council to withhold information subject to section 507.205(a) of the Occupations Code without the necessity of requesting a decision 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). After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) for information held by the council that is made confidential under section 507.205 of the Occupations Code and must be withheld under section 552.101 of the Government Code on that basis. We note that you must only withhold this type of information when none of the exceptions to confidentiality under section 507.205(b) apply. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the council need not ask for a decision from this office again with respect to this type of information. See Open Records Decision 673 at 7 (2001).

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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/be

Ref: ID# 930628

c: Requestor