



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2022

Mr. Samer N. Shobassy
Assistant General Counsel
Texas Medical Board
P.O. Box 2021
Austin, Texas 78768-2021

OR2022-31132

Dear Mr. Shobassy:

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# 974060 (ORR# 33236).

The Texas Medical Board (the "board") received a request for information pertaining to a named individual. The board claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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

¹ We note the board did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301.

² We assume 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 those records contain substantially different types of information than that submitted to this office.

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 [the Act], 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). The board states the submitted information consists of records maintained by the program relating to a physician. The board also states the exceptions do not apply to this information. Thus, the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 167.010 of the Occupations Code.

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 974060

c: Requestor