



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 19, 2022

Mr. Eamon D. Briggs  
Assistant General Counsel  
Texas State Board of Pharmacy  
333 Guadalupe Street, Suite 3-500  
Austin, Texas 78701-3943

OR2022-32212

Dear Mr. Briggs:

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# 979080 (TSBP Request No. L.7.29.22).

The Texas State Board of Pharmacy (the "board") received a request for five categories of information related to agreements between the board and Professional Recovery Network ("PRN"). You state you have released some information to the requestor. You claim some of the requested information is not subject to the Act. You further claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of PRN. Accordingly, you state, and provide documentation showing, you notified PRN of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(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 your arguments and reviewed the submitted information.

You assert the remaining requested information is not "public information" subject to the Act. Section 552.002 of the Act provides "public information" subject to the Act consists of information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). You state the board it does not own or have a right of access to the remaining requested information and that this information is created and maintained by PRN. Based on your representations and our review, we find the remaining requested information is not subject to the Act and need not be released by the board in response to the instant request.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from PRN explaining why the submitted information should not be released. Therefore, we have no basis to conclude PRN has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the board may not withhold the submitted information on the basis of any proprietary interest PRN may have in the information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information made confidential by other statutes. Section 564.001 of the Occupations Code provides, in part, "[a] committee of a professional society composed primarily of pharmacists, the staff of the committee, or a district or local intervenor participating in a program established to aid pharmacists . . . impaired by chemical abuse or mental or physical illness may report in writing to the board the name of an impaired pharmacist . . . and the relevant information relating to the impairment." Occ. Code § 564.001(b). Section 564.002 of the Occupations Code provides "[a]ll records and proceedings of the board, an authorized agent of the board, or a

pharmaceutical organization committee relating to the administration of this chapter are confidential and are not considered public information for purposes of [the Act].” *Id.* § 564.002. Section 564.003 provides:

(a) The board may disclose information confidential under Section 564.002 only:

(1) during a proceeding conducted by the State Office of Administrative Hearings, the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

(2) to a pharmacist licensing or disciplinary authority of another jurisdiction;

(3) under a court order;

(4) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, if the information is necessary for preparation for, or presentation in, the proceeding; or

(5) as provided by Subsection (b).

...

(b) The board may disclose that the license of a pharmacist who is the subject of an order of the board that is confidential under Section 564.002 is suspended, revoked, canceled, restricted, or retired or that the pharmacist is in any other manner limited in the practice of pharmacy. The board may not disclose the nature of the impairment or other information that resulted in the board’s action.

*Id.* § 564.003(a), (b). You state the information you have marked consists of records and proceedings described in section 564.002. You also state none of the exceptions in section 564.003 apply in this instance. Based upon your representations and our review, we find the information you have marked is confidential pursuant to section 564.002 of the Occupations Code and must be withheld under section 552.101 of the Government Code. As no further exceptions to disclosure have been raised, the board must release the remaining information.

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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/eb

Ref: ID# 979080

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)