



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2022

Ms. Raquel Leal, LPC-S
Director
Professional Recovery Network
3200 Steck Avenue, Suite 370
Austin, Texas 78757

OR2022-33511

Dear Ms. Leal:

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# 974956.

Professional Recovery Network ("PRN") received two requests from the same requestor for twenty-nine categories of information. You state you do not have information responsive to some categories of the requests.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, and 552.1101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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." Gov't Code § 552.101. This exception encompasses information made

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S. W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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.

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 [Texas State Board of Pharmacy (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, in relevant part:

(a) All 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]. Records considered confidential under this section include:

(1) information relating to a report made under Section 564.001, including the identity of the individual or entity making the report;

(2) the identity of an impaired pharmacist or pharmacy student participating in a program administered under this chapter, except as provided by Section 564.003;

(3) a report, interview, statement, memorandum, evaluation, communication, or other information possessed by the board, an authorized agent of the board, or a pharmaceutical organization committee, related to a potentially impaired pharmacist or pharmacy student;

(4) a policy or procedure of an entity that contracts with the board relating to personnel selection; and

(5) a record relating to the operation of the board, an authorized agent of the board, or a pharmaceutical organization committee, as the record relates to a potentially impaired pharmacist or pharmacy student.

(b) A record or proceeding described by this section is not subject to disclosure, subpoena, or discovery, except to a member of the board or an authorized agent of the board involved in the discipline of an applicant or license holder.

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 PRN is the current peer assistance program for the board. Accordingly, you state the information related to PRN's peer assistance program for the board 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 submitted information is confidential pursuant to section 564.002 of the Occupations Code and must be withheld under section 552.101 of the Government Code on that basis.³

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

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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/pt

Ref: ID# 974956

c: Requestor