



KEN PAXTON
ATTORNEY GENERAL OF TEXAS



September 2, 2021

Ms. Mia Settle Vinson
Open Records Attorney
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711-2157

OR2021-24128

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# 901662 (Ref. No. R002223-062321).

The Texas Department of Licensing and Regulation (the "department") received a request for a specified complaint file. You state the department released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from 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

¹ We assume that 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 that those records contain substantially different types of information than that submitted to this office.

connection with the complaint and investigation are confidential and not subject to:

(1) disclosure under [the Act.]

...

(d) A complaint or investigation subject to this section and all information and materials subpoenaed or compiled by the department in connection with the complaint and investigation may be disclosed to:

...

(2) a respondent or the respondent's authorized representative[.]

...

(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), (d)(2), (i). Section 51.254(b) lists the professions to which section 51.254 applies and provides, in part:

(b) 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:

...

(10) speech-language pathologists and audiologists regulated under Chapter 401.

Id. § 51.254(b)(10). The department states the submitted information consists of a detailed complaint report and the resulting investigation regarding violations of law or administrative rules regarding the conduct of a licensed speech-language pathologist. Further, the department explains the submitted information includes information and documentation compiled by the department's Enforcement Division during investigations related to the alleged violations and the Enforcement Division's analysis of the evidence. Although we note some of the submitted information is a type of information contemplated by section 51.254(i), the department states it has already released this information to the requestor. *See id.* § 51.254(i).

We note, and the department acknowledges, the requestor represents the respondent in the complaint at issue, and therefore, is one of the parties to whom the information at issue may be disclosed. *See id.* § 51.254(d)(2). In Open Records Decision No. 458 (1987), this office addressed a similar statute that contained an exception to confidentiality based on *bona fide* research purposes. In that decision, this office stated the language of the statute plainly establishes “it is within the [governmental body’s] discretion to decide whether and to what extent to release confidential information[.]” ORD 458 at 5. The decision explained the statute states the governmental body “‘may’ disclose confidential information . . . not that it *must* or *shall* do so,” and “the word ‘may’ is generally regarded as permissive in character.” *Id.* (citing *Bloom v. State Bd. Exam’rs of Psychologists*, 492 S.W.2d 460, 462 (Tex. 1973); *San Angelo Nat’l Bank v. Fitzpatrick*, 30 S.W. 1053, 1054 (Tex. 1895)). In this instance, we believe the same rationale regarding the discretionary nature of the exceptions to confidentiality applies to section 51.254(d)(2). Thus, because releasing confidential information under section 51.254(d) is discretionary and we understand the department does not wish to exercise its discretion to release the information at issue, we conclude the requestor does not have a right of access to the information at issue under section 51.254(d)(2). Accordingly, based on the department’s representations and our review of the information at issue, with the exception of the information subject to section 51.254(i), which the department states it has released, 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 it to withhold information under section 552.101 of the Government Code in conjunction with section 51.254(c) 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). 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 department that is made confidential under section 51.254(c) of the Occupations Code. We note that because releasing confidential information under section 51.254(d) is discretionary, if the department does not wish to exercise its discretion to release the information at issue, the department may rely on this previous determination to withhold information under section 552.101 of the Government Code in conjunction with section 51.254(c) of the Occupations Code. However, we also note that in accordance with section 51.254(i) of the Occupations Code, the department may not withhold notices of alleged violations, disciplinary hearings, or any final disciplinary actions, including warnings and reprimands. 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 department need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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-records-public-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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

Ref: ID# 901662

c: Requestor