THE ATTORNEY GENERAL OF TEXAS

December 12, 1986

JIM MATTOX
ATTORNEY GENERAL

Mr. Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy
1033 La Posada, Suite 340
Austin, Texas 78752

Open Records Decision No. 451

Re: Whether the Open Records Act, article 6252-17a, V.T.C.S., authorizes the Texas State Board of Public Accountancy to withhold information pertaining to a pending complaint against a licensee

Dear Mr. Bradley:

An attorney has asked the Texas State Board of Public Accountancy to release information pertaining to his client, a certified public accountant against whom a complaint is pending before the board. You have asked if the Open Records Act, article 6252-17a, V.T.C.S., authorizes the board to deny this request. An attorney in the board's enforcement division has described this information as follows:

> 1. A computer printout of information compiled by the staff of the Enforcement Division from board records concerning the licensee and the complaint, i.e., the name and current address of the licensee and his attorney, if any; the certificate number of the licensee; the complaint number assigned to the file for identification purposes; the section numbers of provisions of the Rules of Professional Conduct (the Rules) and the Public Accountancy Act of 1979, as amended (article 41a-1, V.T.C.S., 1981) (the Act) cited in the initial inquiry letter; the name and address of the complaining party, and, if applicable, of his attorney; the home and business telephone numbers of the Respondent and the Complainant; and a brief computer synopsis of enforcement activity in the file to date. This data is compiled as an interagency memorandum by attorneys and their staff in anticipation of litigation.
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> 2. Copies of tape recordings and committee reports of the Committee on Technical Standards Review. This advisory committee formed by the board under the authority of section 24(a) of the Act, meets in executive session to conduct a

> preliminary review of complaints and discussion items submitted to the board in contemplation of litigation. It has no power to take any final action -- but it may make recommendations to the board in open session concerning the disposition of items on the committee agenda. The recommendations submitted orally to the board are summarized for the assistance of the committee chairman in a 'committee report' signed by him; tape recordings of the meetings of the committee on Technical Standards Review are made by the staff for purposes of the accurate drafting of the committee report. It should be emphasized that the interagency committee report itself serves as a workpaper of an advisory committee meeting in executive session to consider matters impacting upon possible future litigation. It is a document designed for interoffice use.
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> 3. Telephone logs maintained by attorneys in the Enforcement Division. These 'records' of telephone conversations are kept voluntarily and for personal use by attorneys in the Enforcement Division in anticipation of litigation. There is no requirement that staff attorneys in the Enforcement Division maintain logs of this nature, which are deemed by this office to be attorney work product and exempt from discovery.

The board's attorney has stated:

> Inasmuch as the above described documents have been prepared for no other reason than anticipation of litigation in quasi-judicial and/or judicial settings, it would appear that these documents as prepared fall within the purview of [section 3(a)(3) of the Open Records Act].

Section 3(a)(3) excepts information relating to pending or reasonably anticipated litigation. Open Records Decision No. 416 (1984). At first glance, it would appear that this section applies here, and for purposes of this decision we shall assume that it does. Section 25 of article 41a-1, however, provides in part:

> Any file maintained or information gathered or received by the board concerning a . . . licensee . . . shall be available for inspection by that . . . licensee . . . during normal business hours at the offices of the board in Austin. A . . . licensee . . . may by written communication authorize the board to make any information about

> that . . . licensee . . . available for inspection by designated persons or available for inspection by the public at large. Except upon such written authorization, all information received or gathered by the board concerning the qualifications of any licensee or candidate to register as a public accountant or to receive a certificate as a certified public accountant and all information received or gathered by the board concerning a disciplinary proceeding against a licensee under Section 22 of this Act prior to a public hearing on the matter shall be confidential and shall not be subject to disclosure under [the Open Records Act]. (Emphasis added).

V.T.C.S. art. 41a-1, §25. For present purposes, the relevant part of this section is as follows:

> Except upon such written authorization . . . all information received or gathered by the board concerning a disciplinary proceeding against a licensee under Section 22 of this Act prior to a public hearing on the matter shall be confidential. . . .

The emphasized portion of section 25 establishes that the board may withhold information concerning a pending disciplinary proceeding against a licensee unless that licensee has authorized a designated person to inspect the information. In this instance, the requestor's client has authorized the requestor to inspect the board's materials relating to the proceeding against the client. Therefore, section 25 of article 41a-1 requires the board to grant this request.

It has been suggested that we should construe section 25 differently. The argument is that the words "prior to a public hearing" in the last sentence of this section demonstrate that the legislature could not have intended to allow disciplinary proceeding records to be released whenever written authorization to release them is furnished, but must have meant to preserve the confidentiality of such records pending a public hearing on the matter. This argument is certainly plausible; it is, however, not supported by the syntax of this sentence. The sentence provides that "[e]xcept upon such written authorization," disciplinary proceeding records shall remain confidential prior to a public hearing, which necessarily means that if such authorization is furnished, the records are not confidential. If it were indisputable that the legislature did not intend this interpretation, and if this construction would produce an absurd result, we would eschew it, the language of the statute notwithstanding. See, e.g., Knight v. International Harvester Credit Corp., 627 S.W.2d 382 (Tex. 1982); McKinney v. Blankenship, 282 S.W.2d 691 (Tex. 1955) (court construing statute must look to legislative intent, give effect

to that intent, and avoid unreasonable interpretations). However, where, as here, the wording of the statute points so plainly to the conclusion that disciplinary proceeding records are to be released at any time upon submission of proper written authorization; where there is no legislative history indicating that the legislature could not have intended this result; and where this result is reasonable, we must adopt it. See, e.g., Ex parte Roloff, 510 S.W.2d 913 (Tex. 1974) (plain statutory language must be given effect as written). If the legislature desires to rewrite section 25 to provide for the confidentiality of these records, it may do so; the plain meaning of the statute as now written, however, compels the conclusion that disciplinary proceeding records must be released on submission of proper written authorization.

Accordingly, assuming arguendo that the information at issue here is within section 3(a)(3) of article 6252-17a, it is within both that exception and section 25 of article 41a-1. Section 3(a)(3) is a general exemption, whereas section 25 is a specific provision that applies to particular information in the board's possession. Because specific statutes prevail over general ones, Cuellar v. State, 521 S.W.2d 277 (Tex. Crim. App. 1975); Sam Bassett Lumber Co. v. City of Houston, 198 S.W.2d 879 (Tex. 1947), section 25 supersedes section 3(a)(3).

The board has grounded its claim of entitlement to withhold this information entirely on the exceptions to the Open Records Act. For the reasons given, we conclude that those exceptions must yield to section 25 of article 41a-1, and that the requested records must be released. We have no indication that any information contained in these records is excepted from disclosure by constitutional right of privacy or by any other right that might relate to a third party. Should you wish to make such an assertion, you must do so within ten days.

Very truly yours,

Jim Mattox

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