



October 10, 2000

Mr. Phong P. Phan
Assistant General Counsel
Board of Nurse Examiners for
the State of Texas
P.O. Box 430
Austin, Texas 78767-0430

Dear Mr. Phan:

Enclosed please find a copy of ID# 140080 (OR2000-3862). The original document sent to you inadvertently was misaddressed. We apologize for any inconvenience this oversight may have caused.

Sincerely,

Leslie Pruski
Secretary to:
Michael Garbarino
Assistant Attorney General
Open Records Division

Ref: ID#s 140080

Encl: OR2000-3862

cc: Mr. Jack Washburn
Murphrey & Washburn
Attorneys at Law
820 Gessner, Suite 1560
Houston, Texas 77024
(w/o enclosures)



October 6, 2000

Mr. Phong P. Phan
Assistant General Counsel
Board of Nurse Examiners for
the State of Texas
P.O. Box 430
Austin, Texas 78767-0430

OR2000-3862

Dear Mr. Phan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140080.

The Board of Nurse Examiners for the State of Texas (the "board") received a written request for the following information:

- (1) All "Notification of Employment" form(s) furnished by or on behalf of any employer of the above-referenced Registered Nurse subsequent to February 10, 2000; [and]
- (2) Any "Periodic Reports" furnished by or on behalf of any employer of the above-referenced Registered Nurse subsequent to February 10, 2000.

You contend that the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

The information at issue was submitted to the board in compliance with the conditions of an "Agreed Order" that resulted from an investigation of a complaint against a certain registered nurse for an alleged violation of the Nursing Practice Act, chapter 301 of the Occupations Code. The Agreed Order requires the registered nurse to "cause each present employer in professional nursing to submit" to the board a "Notification of Employment form" and "periodic reports as to [the registered nurse's] capability to practice professional nursing."

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

Section 301.466(a) of the Occupations Code provides:

A complaint and investigation concerning a registered nurse under this subchapter and all information and material compiled by the board in connection with the complaint and investigation are:

(1) confidential and not subject to disclosure under [the Public Information Act].

We believe that the information at issue constitutes “information and material compiled by the board in connection with the complaint and investigation,” and as such is made confidential under section 301.466(a) of the Occupations Code. Although section 301.466 provides exceptions to such confidentiality, those exceptions do not appear to be applicable here. We therefore conclude that the board must withhold the requested information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 301.466(a) of the Occupations Code.¹

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

¹Because we resolve your request under section 552.101 of the Government Code, we need not address your arguments under section 552.108.

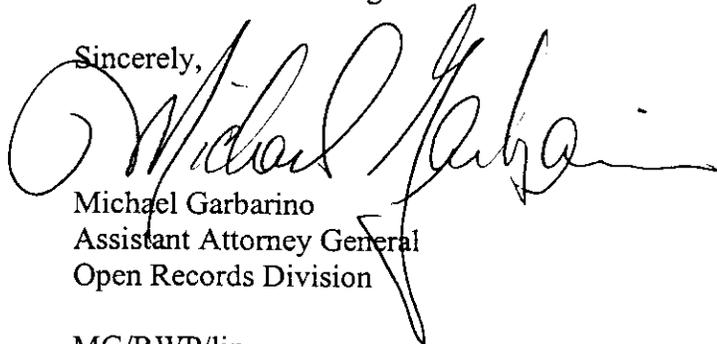
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/ljp

Ref: ID# 140080

Encl. Submitted documents

cc: Mr. Jack Washburn
Murphrey & Washburn
Attorneys at Law
820 Gessner, Suite 1560
Houston, Texas 77024
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