



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2009

Ms. Jena R. Abel
Assistant General Counsel
Texas Board of Nursing
333 Guadalupe Street, Suite 3-460
Austin, Texas 78701

OR2009-05286

Dear Ms. Abel:

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# 340810.

The Texas Board of Nursing (the "board") received a request for eight categories of information pertaining to the requestor's vocational license and disciplinary action taken against it. You state some information has been released to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.130, and 552.136 of the Government Code. We have considered the exceptions 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. This exception encompasses information other statutes make confidential,

¹We 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.

such as the Medical Practice Act ("MPA"). Occ. Code §§ 151.001-165.160. Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records may only be released in accordance with the MPA. ORD 598. After reviewing the information at issue, we agree that the notes created by a registered nurse, labeled Exhibit A, constitute medical records subject to the MPA. *See* ORD 598. Accordingly, the board may only release Exhibit A in accordance with the MPA.²

Section 552.101 also encompasses section 301.466 of the Occupations Code, which provides:

(a) A complaint and investigation concerning a 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 Chapter 552, Government Code; and

(2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or board employee or agent involved in license holder discipline.

(b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

- (1) a person involved with the board in a disciplinary action against the nurse;
- (2) a nursing licensing or disciplinary board in another jurisdiction;
- (3) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;
- (4) a law enforcement agency; or
- (5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

(c) The filing of formal charges against a nurse by the board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Occ. Code § 301.466. You indicate, and the documents reflect, that the information labeled Exhibit C pertains to a “complaint and investigation concerning a nurse.” You state the documents in Exhibit C are “investigatory documents and hearing preparation documents that are directly connected to the originating complaint and subsequent investigation.” You further state that disciplinary action against the requestor is pending, and that a disciplinary hearing was scheduled for March 5, 2009. Based on your representations and our review of the information at issue, we agree that Exhibit C is confidential under section 301.466(a). We find that the requestor is not entitled to receive this information under section 301.466(b) and that the information at issue does not fall under section 301.466(c). Therefore, we conclude the board must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code. The remaining information includes a CRB-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) of the Transportation Code provides for the release

³We note that, as formal charges have been filed against the nurse under section 301.458 of the Occupations Code, the nurse or her counsel of record are entitled, on request, to receive some information from the board. *See* Occ. Code § 301.460.

of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* Here, the requestor has not provided the board with two of the required pieces of information. Thus, you must withhold the accident report, which we have marked, in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.⁴

You have marked portions of the remaining information under section 552.130 of the Government Code, which excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130. We agree the board must withhold the Texas motor vehicle record information you have marked, except the information we have marked for release, under section 552.130 of the Government Code.

In summary, the board (1) may only release Exhibit A in accordance with the MPA, (2) must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 301.466(1) of the Occupations Code, (3) must withhold the marked CRB-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, and (4) must withhold the Texas motor vehicle record information you have marked, except the information we have marked for release, under section 552.130 of the Government Code. The remaining information must be released to the requestor.⁵

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.

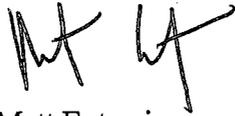
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free,

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁵We note that the information being released contains confidential information to which the requestor has a right of access. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the board receives another request for this same information from a different requestor, then the board should again seek a decision from this office.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Entsminger".

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 340810

Enc. Submitted documents

c: Requestor
(w/o enclosures)