



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 7, 2010

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

OR2010-00344

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# 366519.

The Texas Board of Nursing (the "board") received a request for eleven categories of information pertaining to St. Michael's School of Nursing & Technology ("St. Michael's") from 2002 to the present. You state some responsive information has been provided to the requestor. Although you take no position as to the public availability of the submitted information, you state its release may implicate the interests of St. Michael's. Thus, pursuant to section 552.305 of the Government Code, you notified St. Michael's of the request and of its right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

St. Michael's, through its attorney, submitted a brief objecting to release of the submitted information on the basis of certain discovery privileges. The Act differs in purpose from the statutes and procedural rules providing for discovery of documents in administrative and judicial proceedings. *See* Attorney General Opinion JM-1048 at 2 (1989); Open Records Decision Nos. 551 at 4 (1990), 108 (1975). Furthermore, information that might be privileged from discovery is not necessarily protected from required public disclosure under the Act. Open Records Decision No. 575 at 2 (1990) (discovery privileges in Texas Rules of Evidence not confidentiality provisions for purpose of section 552.101). *But see* Open Records Decision Nos. 677 (2002) (analyzing the work product privilege in the context of

the Act), 676 (2002) (analyzing the attorney-client privilege in the context of the Act). St. Michael's has not provided any arguments establishing how the submitted documents are excepted from disclosure under the Act. *See* Gov't Code § 552.305(b); ORD 542 at 3; *c.f.* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Accordingly, none of the submitted information may be withheld on the basis of any interest St. Michael's may have in it. As you raise no exceptions to disclosure of this information, it must be released in its entirety.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 366519

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. L. Keno Vasquez
The Law Office of L. Keno Vasquez
3525 West Freddy Gonzalez Drive, Suite C
Edinburg, Texas 78539
(w/o enclosures)