



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 26, 2010

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

OR2010-12979

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# 391875.

The Texas Board of Nursing (the "board") received a request for information pertaining to a named individual. You state the board has released some of the requested information to the requestor. You state you will redact social security numbers under section 552.147 of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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, such as 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:

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<sup>1</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

<sup>2</sup>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.

(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:

(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 state the information you have marked in Exhibit A and Exhibit C in its entirety were compiled by the board in connection with its investigation of the named individual. Based on your representations and our review, we agree the information at issue 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 the marked information in Exhibit A and Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.<sup>3</sup>

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

You state portions of the remaining information are subject to section 301.207 of the Occupations Code, which is also encompassed by section 552.101. Section 301.207 provides:

Information regarding a person's diagnosis or treatment for a physical condition, mental condition, or chemical dependency that the person submits to the board for a petition for a declaratory order of eligibility for a license or for an application for an initial license or a license renewal under this chapter is confidential to the same extent information collected on a nurse as part of an investigation of a complaint is confidential under Section 301.466.

*Id.* § 301.207. You contend the information you have marked in Exhibits A and B is confidential under section 301.207. We have marked information regarding the named individual's diagnosis or treatment for a physical condition, mental condition, or chemical dependency that the named individual submitted to the board in a license application. The information we have marked is confidential under section 301.207. We find the requestor is not entitled to receive this information under section 301.466(b), and the information at issue does not fall under section 301.466(c). Therefore, we conclude the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code. However, the remaining information you have marked does not pertain to diagnosis or treatment for a physical condition, mental condition, or chemical dependence. Consequently, the board may not withhold this information under section 552.101 in conjunction with section 301.207.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You assert the grades you have marked in the college transcript in Exhibit A and the information you have marked in Exhibit B are excepted from disclosure under common-law privacy. Upon review, we conclude that the submitted transcript is not highly intimate or embarrassing. Additionally, we find none of the information you have marked in Exhibit B is highly intimate or embarrassing and of no legitimate public interest. Therefore, the board may not withhold any portion of the remaining information it has marked in Exhibits A or B under section 552.101 in conjunction with common-law privacy.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with

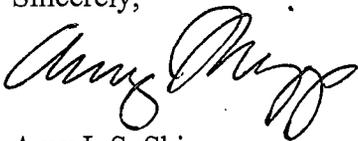
a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail address you marked is not of a type specifically excluded by section 552.137(c). Thus, the board must withhold the e-mail address you have marked under section 552.137, unless its owner consents to its release.<sup>4</sup>

In summary, the board must withhold the marked information in Exhibit A and Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code. The board also must withhold the information we have marked in Exhibits A and B under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code. The board must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless its owner consents to its release. The remaining information must be released to the requestor.

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](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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

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<sup>4</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 391875

Enc. Submitted documents

c: Requestor  
(w/o enclosures)