



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 4, 2010

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

OR2010-15026

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# 395595.

The Texas Board of Nursing (the "board") received a request for information relating to a named registered nurse. You state that some of the requested information has been released. You state that the board has redacted the nurse's social security number from the responsive records pursuant to section 552.147 of the Government Code.<sup>1</sup> You also state that her Texas driver's license number and e-mail address have been redacted pursuant to the previous determinations issued under sections 552.130 and 552.137 of the Government Code in Open Records Decision No. 684 (2009).<sup>2</sup> You claim that some of the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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<sup>1</sup>We note that section 552.147(b) 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.

<sup>2</sup>We note that this office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 and an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

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. You claim section 552.101 in conjunction with section 301.466 of the Occupations Code, which provides as follows:

(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 [the Act];  
and

(2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or a 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 [the Act].

Occ. Code § 301.466. You state that the information you have submitted as Exhibit B and the information you have marked in Exhibit A were compiled by the board in connection with an investigation of the named individual. Based on your representations and our review of the information at issue, we find that the information at issue is confidential under section 301.466(a). We also find that the requestor is not entitled to receive the information

at issue under section 301.466(b) and that the information at issue does not fall within the scope of section 301.466(c). We therefore conclude that the board must withhold Exhibit B and the marked information in Exhibit A under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.<sup>3</sup>

You also claim section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code, which provides as follows:

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 that other information you have marked in Exhibit A is confidential under section 301.207. Having reviewed the information at issue, we have marked information regarding diagnosis or treatment for a physical condition, mental condition, or chemical dependency that was submitted to the board in a license application. We conclude that the information we have marked is confidential under section 301.207. 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 within the scope of section 301.466(c). We therefore conclude that 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.<sup>4</sup> Although you seek to withhold additional information in Exhibit A on this same basis, we find that the remaining information you have marked does not pertain to diagnosis or treatment for a physical condition, mental condition, or chemical dependency. We therefore conclude that the board may not withhold the remaining information you have marked under section 552.101 in conjunction with section 301.207.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See*

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<sup>3</sup>As we are able to make this determination, we need not address your other arguments against disclosure of this information.

<sup>4</sup>As we are able to make this determination, we need not address your other arguments against disclosure of this information.

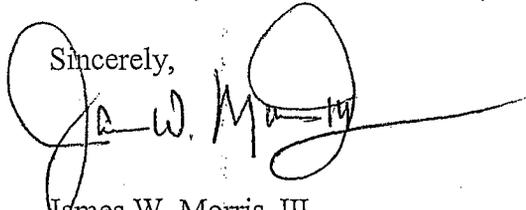
*generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). You also seek to withhold the remaining information at issue in Exhibit A under section 552.101 in conjunction with common-law privacy. Although it could be considered to be highly intimate or embarrassing, we find that the information at issue is of legitimate public interest in this instance. We therefore conclude that the board may not withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary: (1) Exhibit B and the information you have marked in Exhibit A must be withheld under section 552.101 of the Government Code in conjunction with section 301.466 of the Occupations Code; and (2) the information we have marked in Exhibit A must be withheld under section 552.101 in conjunction with section 301.207 of the Occupations Code. The rest of the information at issue must be released.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 395595

Enc: Submitted documents

c: Requestor  
(w/o enclosures)