



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 18, 2011

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

OR2011-07017

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# 417904.

The Texas Board of Nursing (the "board") received a request for all documents pertaining to the requestor's license revocation. You indicate some of the requested information will be released to the requestor upon his response to a cost estimate. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.111, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</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 the Medical Practice Act ("MPA"). Occ. Code §§ 151.001-165.160. Section 159.002 of the Occupations Code provides in pertinent part:

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<sup>1</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.

(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 id.* §§ 159.002, .004; 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). Upon review, we agree that Exhibit B constitutes medical records subject to the MPA. Accordingly, the board may only release Exhibit B in accordance with the MPA.<sup>2</sup> *See* ORD 598.

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:

- (1) a person involved with the board in a disciplinary action against the nurse;

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

- (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 that Exhibit C pertains to the board's investigation of the requestor. 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.<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.136 of the Government Code states, "Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). Upon review, we find the board must withhold the credit card numbers you have marked in Exhibit A under section 552.136 of the Government Code.<sup>4</sup>

In summary, the board may only release Exhibit B in accordance with the MPA. 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. The board must withhold the credit card

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

<sup>4</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

numbers in Exhibit A under section 552.136 of the Government Code. The remaining information must be released to the requestor.<sup>5</sup>

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 417904

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>We note that some of the requested 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.