



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2011

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

OR2011-13660

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# 430571.

The Texas Board of Nursing (the "board") received a request for the board's complete file on a named nurse. You state you have released some of the requested information to the requestor. 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.¹ You also state that this nurse's personal e-mail address has been redacted under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹We 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.

²We note that this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, 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, 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:

(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 [the Act].

Occ. Code § 301.466. You state the information you have marked in Exhibit A relates to the “existence and/or confirmation of a prior and/or current [b]oard investigation” of the named nurse. You state Exhibit B consists of documents that were created or obtained by the board in connection with a board investigation. 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 the entirety of Exhibit B under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.³

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 of the Government Code. Section 301.207 provides:

The following information that a 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:

- (1) information, including diagnosis and treatment, regarding a person's physical or mental condition, intemperate use of drugs or alcohol, or chemical dependency;
- (2) information regarding a person's criminal history; and
- (3) any other information in the petition for declaratory order of eligibility.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 193, § 1 (to be codified as an amendment to Occ. Code § 301.207). You have marked information in Exhibit A which you state is confidential under this statute. Upon review, we agree the information you have marked is confidential under section 301.207. We agree 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 you have marked in Exhibit A under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code.

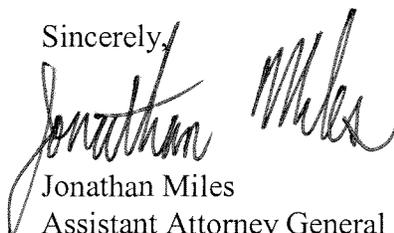
In summary, the board must withhold the information you have marked in Exhibit A and the entirety of Exhibit B under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code. The board must also withhold the information you have marked in Exhibit A under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code. The remaining information must be released.

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

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,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 430571

Enc. Submitted documents

c: Requestor
(w/o enclosures)