



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2011

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

OR2011-16765

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# 436085.

The Texas Board of Nursing (the "board") received a request for the "entire contents" of the investigations of two named individuals and information about the "chain of command" for a named employee. 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.

Initially, we note you have not submitted for our review any information responsive to the request for information about the "chain of command" for the named employee. Thus, to the extent any information responsive to this portion of the request existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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].

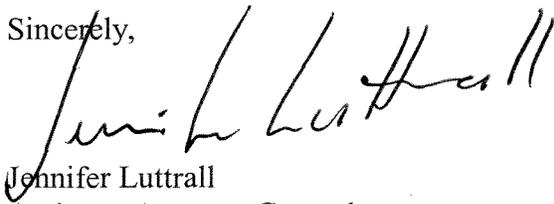
Occ. Code § 301.466. You state the submitted information was created by the board in connection with the board's investigations of the two named individuals. Based on your representations and our review, we agree the information at issue is confidential under section 301.466(a). We find the requestor 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 submitted information under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.¹

¹As our ruling is dispositive, we need not address your remaining argument 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, appearing to read "Jennifer Luttrall", written in a cursive style.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 436085

Enc. Submitted documents

c: Requestor
(w/o enclosures)