



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2012

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

OR2012-04599

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# 449082.

The Texas Board of Nursing (the "board") received a request for information concerning four named nurses. You state the board has released some of the requested information to the requestor. We understand the board will redact driver's license numbers pursuant to section 552.130 of the Government Code¹ and personal e-mail addresses 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

¹The Texas legislature amended section 552.130 of the Government Code effective September 1, 2011, to allow a governmental body to redact the information described in subsection 552.130(a)(1) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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.

you claim and reviewed the submitted information, a portion of which is a representative sample.³

Initially, we note the requestor has excluded social security numbers from his request. Thus, social security numbers are not responsive to the present request for information. This decision does not address the public availability of the non-responsive information, and the board is not required to release non-responsive information in response to this request.

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

³We assume the “representative sample” of information 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 those records contain substantially different types of information than those submitted to this office.

(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 assert that portions of the information in Exhibit A and the entirety of Exhibits B through E are confidential under section 301.466. You state the information at issue in Exhibit A relates to the “existence and/or confirmation of a prior and/or current [b]oard investigation of the named nurses.” You inform us that Exhibits B through E consist 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 entirety of Exhibits B through E and the information you have marked in Exhibit A under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.⁴

You claim that portions of the remaining information in Exhibit A 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.

⁴As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

Id. § 301.207. You have marked information which you state is confidential under this statute. Upon review, we agree the information you have marked, and the additional information we 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 marked information 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 entirety of Exhibits B through E and the information you have marked in Exhibit A 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 remaining marked information in Exhibit A under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code. The board must release the remaining responsive 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 449082

Enc. Submitted documents

c: Requestor
(w/o enclosures)