



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2012

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

OR2012-05051

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# 450369.

The Texas Board of Nursing (the "board") received a request for information regarding a named nurse. You state you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You have released some information and claim the remaining information is excepted from disclosure under sections 552.101, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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:

¹Section 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. See Gov't Code § 552.147(b).

(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 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 information and materials compiled by the board in connection with an investigation of the named nurse. You state this investigation did not result in the filing of formal charges. The information you have marked in exhibit A indicates the lack of a prior or current board investigation. Thus, we find the board has failed to demonstrate how the information you have marked in exhibit A consists of material compiled by the board in connection with a complaint and investigation concerning a nurse. However, based on your representations and our review, we agree exhibit B is confidential under section 301.466(a). We find 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). Accordingly, we conclude the board must withhold exhibit B under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.² The board may not withhold any of the remaining information on the

²As our ruling with regard to this information is dispositive, we need not address your remaining arguments against its disclosure.

basis of section 552.101 of the Government Code in conjunction with section 301.466 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 301.207 of the Occupations 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.

Id. § 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 as well as the additional information we have marked are confidential under section 301.207 of the Occupations Code. 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 as well as the information we have marked in exhibit A under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code.

Section 552.101 of the Government Code encompasses chapter 411 of the Government Code. Criminal history record information ("CHRI") maintained by the Texas Department of Public Safety ("DPS") is deemed confidential under section 411.083 of the Government Code. Gov't Code § 411.083. However, DPS may disseminate this information as provided by chapter 411, subchapter F of the Government Code. *See id.* Section 411.084 governs use of CHRI obtained from DPS and provides, in pertinent part:

(a) Criminal history record information obtained from [DPS] under this subchapter, including any identification information that could reveal the identity of a person about whom [CHRI] is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system:

- (1) is for the exclusive use of the authorized recipient of the information; and

(2) may be disclosed or used by the recipient only if, and only to the extent that, disclosure or use is authorized or directed by:

- (A) this subchapter;
- (B) another statute;
- (C) a rule adopted under a statute; or
- (D) an order of a court of competent jurisdiction.

...

(b) Notwithstanding Subsection (a) or any other provision in this subchapter, [CHRI] obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as authorized by federal law and regulations, federal executive orders, and federal policy.

Id. § 411.084. Section 411.125, which is a part of subchapter F of chapter 411, authorizes the board to obtain from DPS CHRI related to an applicant for or holder of a license issued by the board, a person who has requested a determination of eligibility for a license from the board, or the subject of an investigation by the board. *Id.* § 411.125. We note the submitted CHRI was obtained pursuant to section 411.125. The board may only disclose CHRI as authorized or directed by subchapter F of chapter 411, another state or federal statute, a rule adopted under a statute, or federal regulations. *Id.* § 411.084; *see also* Occ. Code § 301.1615 (CHRI the board obtains pursuant to section 411.125 and from the Federal Bureau of Investigation may be used by the board only and may not be disclosed). Based on your representations and our review, we find the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The remaining information contains an e-mail address of a member of the public. You state the board has not received consent for disclosure of the e-mail address. Accordingly, the board must withhold the e-mail address you have marked under section 552.137 of the Government Code.

In summary, the board must withhold exhibit B under section 552.101 of the Government Code in conjunction with section 301.466 of the Occupations Code. The board must withhold the information you have marked and the additional information we have marked in exhibit A under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code. The board must withhold the information we have

marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The board must withhold the e-mail address you have marked under section 552.137 of the Government Code. The remaining information 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, 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 cursive script that reads "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 450369

Enc. Submitted documents

c: Requestor
(w/o enclosures)