



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

October 5, 2012

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

OR2012-15937

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# 467143.

The Texas Board of Nursing (the "board") received a request for information concerning a named nurse. You state the board has released some of the requested information to the requestor. You state you will redact social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101 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:

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<sup>1</sup>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. *See* Gov't Code § 552.147(b).

**(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 [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 inform us that 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 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.

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, is 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 552.137 of the Government Code 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 e-mail address at issue is not excluded by subsection (c). Therefore, the board must withhold the personal e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.<sup>2</sup>

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 marked information in Exhibit A under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code. Unless the owner affirmatively consents to disclosure, the board must withhold the e-mail address you have

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<sup>2</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain 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.

marked under section 552.137 of the Government Code. The board must release the remaining 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](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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/akg

Ref: ID# 467143

Enc. Submitted documents

c: Requestor  
(w/o enclosures)