



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2012

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

OR2012-18642

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# 471587.

The Texas Board of Nursing (the "board") received a request for information regarding a named nurse. You state the board has released some of the requested information. You claim portions of the remaining 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 representative sample of information.¹

Initially, you state Exhibits A and B were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-15112 (2012). In that ruling, we concluded the board must withhold certain information under section 552.101 of the Government Code in conjunction with sections 301.466 and 301.207 of the Occupations Code and a certain e-mail address under section 552.137 of the Government Code. The board must release the remaining information. As we have no indication the law, facts, and

¹We assume that the "representative sample" of records 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 that those records contain substantially different types of information than that submitted to this office.

circumstances on which the prior ruling was based have changed, the board must continue to rely on Open Records Letter No. 2012-15112 as a previous determination and withhold or release Exhibits A and B in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 as follows:

(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 a 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 Exhibit C consists of a complaint concerning the named nurse. You state the information you have marked in Exhibit D concerns the existence of board investigations and relates to the investigation of a current or former complaint. We note the marked information indicates whether the board previously investigated or is currently investigating a complaint against the named nurse. Upon review, we find the board has failed to demonstrate the information you have marked in Exhibit D was 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 C is confidential under section 301.466. 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 C under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations 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.

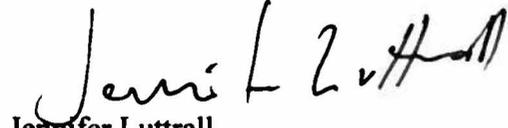
In summary, the board must continue to rely on Open Records Letter No. 2012-15112 as a previous determination and withhold or release Exhibits A and B in accordance with that ruling. The board must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code. The board must withhold the 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 black ink, appearing to read "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 471587

Enc. Submitted documents

c: Requestor
(w/o enclosures)