



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2012

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

OR2012-19909

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# 474252.

The Texas Board of Nursing (the "board") received two requests from the same requestor for seven categories of information pertaining to two named nurses. You state some information has been released. You state the board will redact social security numbers as permitted by section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information, a portion of which is a representative sample.²

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

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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

Code § 552.101. This exception encompasses information made confidential by other statutes, 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 [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 board's investigations and prior investigations. You state Exhibit B consists of information and materials compiled by the board in connection with investigations of the named nurses. You state these investigations did not result in the filing of formal charges. The information you have marked in Exhibit A indicates the lack of or existence of prior or current board investigations. 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, and this information may not be withheld under section 552.101 on that basis. 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.³

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, and 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 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.

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). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses you have marked are not of a type specifically excluded by section 552.137(c). Accordingly, the board must withhold the e-mail addresses

³Because our ruling is dispositive, we do not address your remaining argument against disclosure for this information.

you have marked under section 552.137, unless their owners have affirmatively consented to disclosure.⁴

In summary, the board must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 301.466(a) 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 Government Code. The board must withhold the e-mail addresses you marked in Exhibit A under section 552.137 of the Government Code unless their owners have affirmatively consented to disclosure. The remaining information in Exhibit A 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 474252

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We 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.