



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2013

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

OR2013-15915

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# 497800.

The Texas Board of Nursing (the "board") received a request for all information pertaining to a named nurse. You state you have released some of the requested information. You state you will redact information pursuant to section 552.147(b) of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

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.

§ 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 B consists of the board's investigative file concerning the named nurse. We note the information you have marked in Exhibit A 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 A 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 B 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).

We note, however, the requestor asserts a right of access to the information contained in Exhibit B pursuant to section 301.417(d) of the Occupations Code. Section 301.417 provides:

(a) A report required or authorized under this subchapter and the identity of the person making the report are confidential and may not be disclosed except as provided by this section and Section 301.414.

(b) The board may disclose the information to the same extent that the board may disclose information relating to a complaint under Section 301.466.

(c) Repealed by Acts 2005, 79th Leg., ch. 113, § 18.

(d) In addition to the other authorizations of this section, the information may be disclosed in:

(1) a civil action in which a reporting person is named as a defendant as a result of making the report; or

(2) the prosecution of a cause of action based on a claim that the reporting person was subject to retaliatory action as a result of making the report.

Id. § 301.417. The requestor informs us she represents the defendants in a civil action in which the plaintiffs allege the defendants retaliated against the plaintiffs for making a report to the board concerning the named nurse. *See id.* §§ 301.401-.419 (pertaining to the reporting of violations and patient care concerns regarding nurses). The requestor states this suit was filed under section 301.413 of the Occupations Code. Section 301.413 is entitled “Retaliatory Action” and provides that a person who makes a report under subchapter I has a cause of action against a person who retaliates against the reporting party. *Id.* § 301.413(b), (c). The requestor argues that, because plaintiffs are prosecuting a cause of action for retaliation under section 301.413, section 301.417(d)(2) authorizes disclosure of the requested information.

We note section 310.417(d) is a discovery provision as it pertains to the availability of certain kinds of information in a specific type of judicial proceeding. In this instance, the requestor requested the information from the board under the Act. The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See id.* §§ 552.0055 (subpoena duces tecum or request for discovery issued in compliance with statute or rule of civil or criminal procedure is not considered to be request for information under the Act), .006 (chapter 552 does not authorize withholding of public information or limit the availability of public information to the public, except as expressly provided by chapter 552). The discovery process is a process through which parties to litigation can

obtain information pertaining to the litigation. A public information request under the Act is a process in which any individual may request information from a governmental body. Thus, the discovery process has no bearing on the availability of information requested under the Act. Accordingly, we conclude that the board is not required to release any of the submitted information under section 301.417(d) in response to this request.

Section 552.101 of the Government Code also encompasses section 301.207 of the Occupations Code. Section 301.207 provides as follows:

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 portions of Exhibit A under section 301.207, which you state are confidential under this statute. Upon review, we agree the information you have marked is confidential under section 301.207 of the Occupations Code. We find 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 in Exhibit A under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find the board must withhold the information you have marked under section 552.130 of the Government Code.³

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to 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* Gov't Code § 552.130(d), (e).

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 id.* § 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.⁴

In summary, 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. The board must also withhold the information you 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 you have marked under section 552.130 of the Government Code. 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. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

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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 opinion.

Ref: ID# 497800

Enc. Submitted documents

c: Requestor
(w/o enclosures)