



March 14, 2001

Ms. Lynda G. Pringle  
Investigator  
Texas Board of Vocational Nurse Examiners  
333 Guadalupe Street, Suite 3-400  
Austin, Texas 78701

OR2001-1001

Dear Ms. Pringle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144972.

The Texas Board of Vocational Nurse Examiners (the "board") received two requests from the same requestor for information since January 1, 1996 pertaining to the actual or proposed revocation of licensed vocational nursing licenses. You have submitted for our review a sample of information responsive to the request, consisting of a list containing the names, LVN numbers, violations, and dates for licenses revoked, suspended, suspended/probated, reinstated, reinstated with probation, and denied reinstatement. The list also includes names, violations, and dates for examination applications approved with probation, examination applicants denied licensure, endorsement applicants granted licensure with probation, and reprimands issued. You assert that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must first address certain procedural matters. Section 552.301(e)(1) of the Government Code provides that the following information must be submitted to this office no later than the fifteenth business day after the date a governmental body receives an information request:

- (A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

- (B) a copy of the written request for information;
- (C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and
- (D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]

Although you did not provide a signed statement as to the date on which each of the requests at issue was received by the board, the submitted copies of each of the requests do contain date stamps. We assume the date stamps were applied by the board to indicate the dates the board received each request. The first request, dated December 23, 2000, is stamped December 28, 2000. The second request, dated January 2, 2001, is stamped January 5, 2001. We thus find the board has provided "evidence sufficient to establish" that the first request was received by the board on December 28, 2000 and the second on January 5, 2001. Gov't Code § 552.301(e)(1)(C). Accordingly, the fifteen business day deadline for the first request was January 22, 2001, and the fifteen business day deadline for the second request was January 29, 2001.

The sample of responsive information was submitted to this office via correspondence, dated January 23, 2001, and containing a postal meter imprint of January 24, 2001. *See* Gov't Code § 552.308. Thus, the board did not timely comply with section 552.301(e)(1)(D) with respect to the first request.

In addition, the board did not submit to this office in connection with either of the requests any written comments stating the reasons why the stated exception applies that would allow the information to be withheld. Gov't Code § 552.301(e)(1)(A). We acknowledge that your correspondence to this office dated January 23, 2001 states that the board "previously forwarded" to this office "a letter explaining the exceptions which apply to [the submitted] records." However, this office has no record of receiving a letter that complies with section 552.301(e)(1)(A).

If a governmental body does not comply with section 552.301, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. Generally, a compelling reason under section 552.302 exists only where the information at issue is confidential by law or its release implicates third party interests. *See, e.g.,* Open Records Decision No. 150 (1977). Section 552.103, the sole exception you assert, is a discretionary exception under the Public Information Act which does not demonstrate a compelling reason

to withhold information under section 552.302.<sup>1</sup> Accordingly, we conclude pursuant to section 552.302 that the board must release to the requestor the information responsive to the requests.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/MG/seg

Ref: ID# 144972

Encl. Submitted documents

cc: Ms. Catherine Tabor  
1608 Hartford Road, Suite 100  
Austin, Texas 78703-3314  
(w/o enclosures)