



June 3, 2002

Mr. James Johnston
General Counsel
Board of Nurse Examiners for the State of Texas
P.O. Box 430
Austin, Texas 78767-0430

OR2002-2989

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163747.

The Board of Nurse Examiners for the State of Texas (the "board") received a request for information regarding a complaint alleging violations of the Nursing Practice Act, chapter 301 of the Occupations Code, by a named registered nurse. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 301.466 of the Occupations Code provides in pertinent part:

(a) A complaint and investigation concerning a registered 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 Chapter 552, Government Code; 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 professional 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 registered 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 Chapter 552, Government Code.

You acknowledge, and the request reflects, that the requestor in this instance is a detective with the Harris County Sheriff's Department. You argue, however, that the requestor does not seek the information at issue for law enforcement purposes, but for an internal investigation into an employment grievance. We note that subsection 301.466(b)(4) by its express terms does not limit how a law enforcement agency may use information obtained under this section. In the past, when intending to create express limits governing the purposes for which law enforcement agencies may obtain information, the legislature has used express language to effect this intent. For example, prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided that inspection of juvenile law enforcement records was permitted by "law enforcement officers when necessary for the discharge of their official duties." Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. In contrast, the current Family Code provision regarding confidentiality of juvenile law enforcement records does not contain such express limits. *See* Fam. Code §§ 58.007(c), (e) (law enforcement records may be inspected by a juvenile justice agency and a criminal justice agency). We determine that by the plain language of the statute, section 301.466 does not limit the purposes for which a law enforcement agency may receive information regarding a complaint and investigation under the Nursing Practice Act. Accordingly, as the instant request was made by an agent of a law

enforcement agency in the agent's official capacity, we determine that the board has the discretion to disclose the requested complaint to this requestor pursuant to section 301.446(b)(4) of the Occupations Code.

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 benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 'DRS', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID# 163747

Enc: Submitted documents

c: Detective Jimmie L. Clark
Harris County Sheriff's Department
Internal Affairs Division
1301 Franklin
Houston, Texas 77002-1978
(w/o enclosures)