



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2009

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

OR2009-09263

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# 348022.

The Texas Board of Nursing (the "board") received a request for information pertaining to a named nurse. You state that the board has released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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:

(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 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 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 Chapter 552, Government Code.

Occ. Code § 301.466. You state, and the documents reflect, that the information in Exhibit B, as well as the information you have marked in Exhibit A, were compiled and developed by the board in connection with its investigation of the named nurse. Based on your representations and our review of the information at issue, we agree that Exhibit B and the information you have marked in Exhibit A are confidential under section 301.466(a). We find that 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). Therefore, we conclude the board must withhold Exhibit B and the information you have marked in Exhibit A under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.¹

We note portions of the remaining information are subject to section 301.207 of the Occupations Code, which is also encompassed by section 552.101. Section 301.207 provides:

¹As our ruling is dispositive, we need not address your remaining claims against disclosure of this information.

Information regarding a person's diagnosis or treatment for a physical condition, mental condition, or chemical dependency that the 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.

Act of June 19, 2009, 81st Leg., R.S., H.B. 3961, § 7 (to be codified at Occ. Code § 301.207). The information we have marked in Exhibit A is confidential under section 301.207. We find that 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). Therefore, we conclude the board must withhold the 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.²

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found that a compilation of an individual's criminal history is also highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find that none of the remaining information you have marked in Exhibit A constitutes a compilation of an individual's criminal history. Further, although portions of the submitted information could be considered highly intimate or embarrassing, the information at issue is of legitimate public interest in this instance. Therefore, the board may not withhold any portion of the remaining information it has marked in Exhibit A under section 552.101 in conjunction with common-law privacy.

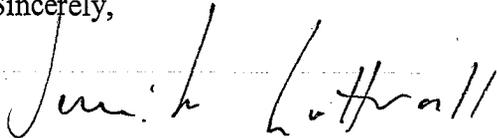
²As our ruling is dispositive, we need not address your remaining claim against disclosure of this information.

In summary, the board must withhold Exhibit B and the information you have marked in Exhibit A 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 we have marked in Exhibit A under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code. As no further exceptions to disclosure have been raised, the board must release the remaining information in Exhibit A.³

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 at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 348022

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that the remaining information contains a social security number. Section 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 a decision from this office under the Act.