



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2010

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

OR2010-05305

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# 376140.

The Texas Board of Nursing (the "board") received a request for information pertaining to a named individual. You state the board has released some of the requested information to the requestor. You state you will redact social security numbers under section 552.147 of the Government Code.¹ You claim that the submitted information is 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 representative sample of information.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 Code § 552.101. This exception encompasses information other statutes make confidential, such as section 301.466 of the Occupations Code, which provides:

¹We note that 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.

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

(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 Exhibits B through E were compiled by the board in connection with the board's investigation of an original complaint against the named individual at issue. Based on your representations and our review, we agree that Exhibits B through E 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 Exhibits B through E under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.³

³As our ruling for on this issue is dispositive, we need not address your remaining arguments against disclosure of this information.

You state 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:

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.

Id. § 301.207. You have marked information that 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 you have marked under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code.

In summary, the board must withhold Exhibits B through E 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 under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code. 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.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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 376140

Enc. Submitted documents

c: Requestor
(w/o enclosures)