



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2014

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

OR2014-00572

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# 510420.

The Texas Board of Nursing (the "board") received a request for all information related to Platt Careers - Texas, Inc. d/b/a Platt College - Dallas Campus Vocational Nursing Education Program ("Platt"), including fifty-three specified categories of information. You state the board has released some of the requested information. You claim the information submitted as Exhibit B is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state, and provide documentation showing, you notified Platt of the request for information and of its right to submit arguments to this office as to why the information submitted as Exhibit A should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).* We have reviewed the submitted information and the submitted arguments.

Initially, we note the board has redacted portions of the information submitted as Exhibit C. You state the board is withholding e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009) and social security numbers under section 552.147(b) of the Government Code.¹ However,

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain 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 decision. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social

you also assert the board has redacted other information from Exhibit C under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the board should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Platt explaining why the information at issue should not be released. Therefore, we have no basis to conclude Platt has a protected proprietary interest in the information at issue. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the board may not withhold the information submitted as Exhibit A on the basis of any proprietary interest Platt may have in the 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 [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 board employee or agent involved in license holder discipline.

security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

(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 inform us Exhibit B consists of documents that were created or compiled by the board in connection with board investigations concerning nurses. You state the information at issue does not fall into any of the categories of information that are subject to disclosure under section 301.466(c). Based on your representations and our review, we agree Exhibit B is confidential under section 301.466(a). We find the requestor is not entitled to receive this information under section 301.466(b). Accordingly, we conclude 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.²

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:

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

- (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 C under section 301.207, which you state are confidential under this statute. Upon review, we agree the information you have marked in Exhibit C 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 C under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code.

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 withhold the information you have marked in Exhibit C 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.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 510420

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Vocational Nursing Education Program Director
Platt Vocational Nursing Education Program
2974 LBJ Freeway, Suite 300
Dallas, Texas 75234
(w/o enclosures)