



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2014

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

OR2014-06424

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# 519932.

The Texas Board of Nursing (the "board") received a request for the identity of the individual who made a report to the board regarding the requestor's client.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor only seeks the identity of the person making the report regarding his client. Accordingly, any other information is not responsive to the present

¹We note the requestor states in his request that he is seeking the requested information pursuant to the Act and section 301.417 of the Occupations Code. We note section 301.417 is a discovery provision that provides for the availability of certain kinds of information in a specific type of judicial proceeding and not under the Act. Accordingly, we need not address the applicability of section 301.417. *See* Gov't Code § 552.055 (subpoena duces tecum or request for discovery issued in compliance with statute or rule of civil or criminal procedure is not considered to be request for information under the Act).

²We note the board did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of that section to the submitted information. *See id.* §§ 552.007, .302, .352.

request. This ruling does not address the public availability of non-responsive information, and the board need not release non-responsive information in response to this request.

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 a 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 [the Act].

Occ. Code § 301.466. You inform us the responsive information is contained in a complaint concerning a nurse. You state the responsive information 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 the responsive information is confidential

under section 301.466(a). We find 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). Accordingly, we conclude the board must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/tch

Ref: ID# 519932

Enc. Submitted documents

c: Requestor
(w/o enclosures)