



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2015

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

OR2015-25173

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# 589026.

The Texas Board of Nursing (the "board") received a request for information pertaining to the investigation of a named individual.¹ You state the board has released some information. The board claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the board claims and reviewed the submitted representative sample of information.²

¹We note the board sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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

Section 552.101 of the Government Code exempts 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, and the information described by Subsection (d) 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].

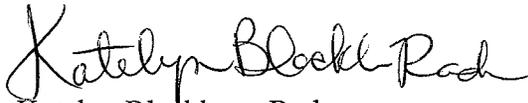
Occ. Code § 301.466. Section 301.466 applies to information created or compiled by the board as part of an investigation by the board. The board informs us the submitted information was collected or created by the board as part of its investigation into a nurse. The board states the submitted information does not fall into any of the categories of information that are subject to disclosure under section 301.466(c). We find the requestor is not entitled to receive this information under section 301.466(b). Based on your representations and our review, we agree the information at issue is confidential under section 301.466(a). Accordingly, we conclude the board must withhold the submitted

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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 589026

Enc. Submitted documents

c: Requestor
(w/o enclosures)