



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 19, 2016

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

OR2016-11580

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# 611248.

The Texas Board of Nursing (the "board") received a request for (1) all e-mails sent to or received from a named individual since a specific date; (2) all e-mails mentioning the named individual in the subject or body of the message since a specific date; (3) all "paper correspondence" received from the named individual since a specific date; (4) all e-mails exchanged with any of eighteen employees of the Solicitor General's Office from within a specific date range; (5) all e-mails sent to or received from any e-mail address using a specified domain name since a specific date; (6) all requests for public information received by the board mentioning the named individual since a specific date, to include the responses provided by the board to those requestors, and any records deemed responsive to those requests; and (7) all e-mails exchanged with a named individual since a specific date. The board states it has released some information. The board claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions the board claims 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, 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(a)-(c). The board informs us Exhibit C was collected or created by the board as part of its investigations into nurses. The board states 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 these representations and our review, we agree Exhibit C is confidential under section 301.466(a). Further, 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). Accordingly, we conclude the board must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find some of the e-mail addresses the board has marked are made confidential by section 552.137. Accordingly, the board must withhold these e-mail addresses under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure. However, we find the remaining e-mail addresses, which we have marked for release, are not of the type made confidential by section 552.137, and they may not be withheld on that basis.

In summary, the board must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code. With the exception of the e-mail addresses we have marked for release, the board must withhold the e-mail addresses it has marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure. 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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 611248

Enc. Submitted documents

c: Requestor  
(w/o enclosures)