



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2016

Mr. William Christian
Counsel for Del Mar College
Graves, Dougherty, Hearon & Moody, P.C.
P.O. Box 98
Austin, Texas 78767

OR2016-20447

Dear Mr. Christian:

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# 626371 (DMC 016-023).

Del Mar College (the "college"), which you represent, received a request for all correspondence sent to or received from the Texas State Board of Nursing (the "board") during a specified time period. You state the college will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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 made confidential by other statutes, such as section 301.466 of the Occupations Code, which provides:

¹We 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.

(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). You state, and the submitted documents reflect, Exhibit A was collected or created by the board as part of its investigations into nurses. You do not inform us the information at issue falls 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 A 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 college must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 303.006 of the Occupations Code. Chapter 303 of the Occupations Code addresses the peer review of nurses. Section 303.006 protects all communications made to a nursing peer review committee and makes the committee proceedings confidential. *Id.* § 303.006. Information protected by section 303.006 may be released only as provided in section 303.007. You inform us Exhibit B consists of materials that were created by a nursing peer review committee. Thus, we find the information at issue is confidential under section 303.006 of the Occupations Code. You state the provisions of section 303.007 do not apply to the information at issue. Therefore, the college must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 303.006 of the Occupations Code.

In summary, the college must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code. Additionally, the college must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 303.006 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 626371

Enc. Submitted documents

c: Requestor
(w/o enclosures)