



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 29, 2015

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

OR2015-08332

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# 561781.

The Texas Board of Nursing (the "board") received a request for a letter stating the requestor has a background check on record with the board. You claim 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 information.

Initially, you state the requestor has asked the board to create a document that does not currently exist. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act requires the governmental body to make a good-faith effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the board has submitted information for our review and raised exceptions to disclosure for the information, we find the board has made a good-faith effort to submit information that is responsive to the request. Therefore, we will address the applicability of the claimed exception to 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. Section 552.101 encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center and confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions

and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2).

Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI. However, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code.

Upon review, we find the board has failed to demonstrate the submitted information constitutes confidential CHRI. Therefore, the board may not withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.¹ As you raise no other exception to disclosure, the board must release the submitted 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

¹We note the requestor can obtain her own CHRI from DPS. *See* Gov’t Code § 411.083(b)(3).

Ref: ID# 561781

Enc. Submitted documents

c: Requestor
(w/o enclosures)