



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2017

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

OR2017-00402

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# 640643.

The Texas Board of Nursing (the "board") received a request for information pertaining to disciplinary action taken against a named individual. You state you released some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of some of the submitted information may implicate the proprietary interests of Howard Payne University (the "university"). Accordingly, you state, and provide documentation showing, you notified the university of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information and considered the submitted arguments.

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-18661 (2016). In that ruling, we determined the board must (1) withhold certain information under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code; (2) withhold certain e-mail addresses under section 552.137 of the

Government Code, to the extent the e-mail addresses at issue were not excluded by subsection 552.137(c) of the Government Code, unless their owners affirmatively consented to their release; and (3) release the remaining information. You indicate there has not been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the board must rely on Open Records Letter No. 2016-18661 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your argument against disclosure of the submitted information, which is not subject to the previous ruling.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the university explaining why the submitted information should not be released. Therefore, we have no basis to conclude the university has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the board may not withhold the submitted information on the basis of any proprietary interest the university may have in the 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 made confidential by other statutes, 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). You inform us Attachment B was collected or created by the board as part of its investigation into a nurse. You state, and we agree, Attachment B 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 Attachment B is confidential under section 301.466(a). We find the requestor is not entitled to receive this information under section 301.466(b). Accordingly, we conclude the board must withhold Attachment B under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.

In summary, the board must rely on Open Records Letter No. 2016-18661 as a previous determination and withhold or release the identical information in accordance with that ruling. The board must withhold Attachment B under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code. 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/>

[url_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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 640643

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)