



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 21, 2017

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

OR2017-03763

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# 646876.

The Texas Board of Nursing (the "board") received a request for specified information related to a named individual. 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.

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, in part, the following:

(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:

...

(2) a nursing licensing or disciplinary board in another jurisdiction[.]

...

(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), (b)(2), (c). You inform us the submitted information consists of a deferred disciplinary order pertaining to the named individual entered on July 19, 2011. You state, pursuant to section 301.6555 of the Occupations Code, a deferred disciplinary order is public for a certain period of time. However, if the individual is able to meet the imposed conditions of the order after the specified period of time and the complaint is dismissed, the deferred action becomes confidential to the same extent as a complaint is confidential under section 301.466. *See id.* § 301.6555(b). *See also* 22 TAC § 213.34(f) (providing that a deferred disciplinary order will be available to the public for a minimum of five years and until such time as an individual successfully completes all of the conditions required by the order and the originating complaint is dismissed by the board, after which, the order becomes confidential to the same extent a complaint is confidential under section 301.466 of the Occupations Code).

You state the submitted deferred disciplinary order was completed on July 19, 2016 and, as the five year deferral period has now passed, the order is now confidential under section 301.466, as authorized by section 301.6555 of the Occupations Code and section 213.34 of title 22 of the Texas Administrative Code. You further state the submitted information no longer falls 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 the submitted information is generally confidential under section 301.466(a) of the Occupations Code. However, we note the requestor is a representative of the Kansas State Board of Nursing. *See* Occ. Code § 301.466(b). Section 301.466(b)(2) states information subject to section 301.466(a) may be disclosed to a nursing licensing agency or disciplinary board in another jurisdiction. Accordingly, the board has the discretion to release the submitted information to this requestor pursuant to section 301.466(b)(2), notwithstanding

the confidentiality of section 301.466(a) of the Occupation Code. In this instance, you state the board has chosen not to exercise its discretion under section 301.466(b)(2) of the Occupations Code. Accordingly, the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 301.466(a) 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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a long horizontal flourish extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 646876

Enc. Submitted documents

c: Requestor
(w/o enclosures)