



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2017

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

OR2017-06725

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# 654104.

The Texas Board of Nursing (the "board") received a request for a contact telephone number and e-mail address of a named individual. The board claims the requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the request for information because it does not consist of a telephone number or e-mail address of the named individual. This ruling does not address the public availability of any information that is not responsive to the request, and the board is not required to release this information in response to this request.

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which

would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. However, an individual's name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (190) (disclosure of person's name, address, or telephone number not an invasion of privacy). Upon review, we find none of the submitted responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the submitted responsive information is not confidential under common-law privacy, and the board may not withhold it under section 552.101 on that ground.


Section 552.137 of the Government Code 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). Gov't Code § 552.137(a)-(c). The board states the individual whose information is at issue has not affirmatively consented to the release of the submitted e-mail addresses, which it has marked. Nevertheless, we note subsection 552.137(c)(5) states subsection 552.137(a) does not apply to an e-mail address "provided to a governmental body for the purpose of providing public comment or receiving notices related to an application for a license as defined by Section 2001.003(2) of [the Government Code], or receiving orders or decisions from a governmental body." *Id.* § 552.137(c)(5). We are unable to discern whether the e-mail addresses at issue fall within the scope of section 552.137(c). Therefore, we must rule conditionally. To the extent the marked e-mail addresses are not excluded by subsection 552.137(c) of the Government Code, the board must withhold them under section 552.137 of the Government Code. *See id.* § 552.137(b). However, to the extent the marked e-mail addresses are excluded by subsection 552.137(c), the board may not withhold them under section 552.137 but, instead, must release them to the requestor. The board must release the remaining responsive 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 654104

Enc. Submitted documents

c: Requestor
(w/o enclosures)