



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2017

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

OR2017-16302

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# 669240.

The Texas Board of Nursing (the "board") received a request for "a list of RN's email addresses."¹ The board claims the requested information is excepted from disclosure under sections 552.101 through 552.148 of the Government Code. We have considered the claimed exceptions.

Initially, we note the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-12651 (2017). In Open Records Letter No. 2017-12651, we determined, in part, the board must withhold e-mail addresses within its licensure database unless the e-mail addresses at issue are excluded by subsection 552.137(c) of the Government Code or the individuals to whom the e-mail addresses belong affirmatively consent to their release. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the board must continue to rely on Open Records Letter No. 2017-12651 as a previous determination and withhold or release the

¹As the board did not submit a copy of the request, we take the description of the information at issue from its briefing.

information in accordance with that ruling. To the extent the requested information is not subject to Open Records Letter No. 2017-12651, we will address the board's arguments against disclosure.

We must next address the board's procedural obligations under section 552.301 of the Government Code. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The board received the request for information on May 24, 2017. However, as of the date of this letter, the board has not submitted written comments regarding the stated exceptions, a copy of the written request for information, or a copy or representative sample of the requested information. Therefore, the board failed to comply with the procedural requirements mandated by section 552.301(e).

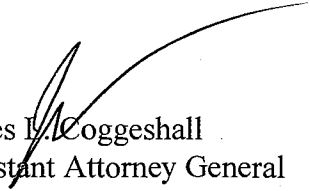
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although the board raises exceptions to disclosure, because it has not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, to the extent the requested information is not subject to Open Records Letter No. 2017-12651, we have no choice but to order the requested information be released pursuant to section 552.302. If the board believes the information may not lawfully be released, it must challenge this ruling in court pursuant to section 552.324 of the Government 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,



James W. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 669240

c: Requestor