



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2017

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

OR2017-28912

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# 690058.

The Texas Board of Nursing (the "board") received a request for information pertaining to specified complaints. The board claims the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 section encompasses section 301.466 of the Occupations Code, which provides, in part, as follow:

¹The requestor asserts the board did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Regardless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the claim of the board under that section.

(a) A complaint and investigation concerning a nurse under this subchapter[,] 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].

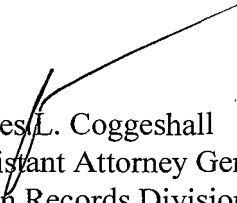
Occ. Code § 301.466(a)-(c). The board states it created or compiled the submitted information as part of an investigation it conducted. Based on these representations, we agree the submitted information is confidential under section 301.466(a). The requestor asserts she has a right of access to the submitted information pursuant to section 552.023 of the Government Code, which provides a person or a person's authorized representative has a right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023(a). However, the release of information made confidential by section 301.466(a) of the Occupations Code is governed by the provisions of that section, and not by section 552.023 of the Government Code. The board represents the requestor is not entitled to receive the submitted information under section 301.466(b) of the Occupations Code, and the information does not fall under

section 301.466(c). Accordingly, we conclude 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tdw

Ref: ID# 690058

Enc. Submitted documents

c: Requestor
(w/o enclosures)