



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 9, 2018

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

OR2018-00592

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# 693849.

The Texas Board of Nursing (the "board") received a request for information pertaining to a named individual.<sup>1</sup> The board states it has provided some of the requested information to the requestor, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the claimed exception 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 section 301.466(a) of the Occupations Code, which provides as follows:

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

<sup>2</sup>We note the board did not comply with the requirements of section 552.301(e) of the Government Code. *See* Gov't Code § 552.301(e). Nevertheless, because section 552.101 of the Government Code makes information confidential, it can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. Thus, we will consider the claim of the board under that section.

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.

Occ. Code § 301.466(a). Section 301.466 only applies to information created or compiled by the board as part of an investigation by the board. The board states it created or compiled the submitted information as part of an investigation. The board also states the information does not fall into any of the categories of information that are subject to disclosure under section 301.466(c). Based on these representations, we agree the submitted information is confidential under section 301.466(a). Further, the requestor is not entitled to receive this information under section 301.466(b) and the information at issue 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)(1) 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](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# 693849

Enc. Submitted documents

c: Requestor  
(w/o enclosures)