



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 16, 2018

Ms. Jena R. Abel
Deputy General Counsel
Texas Board of Nursing
333 Guadalupe Street, Suite 3-460
Austin, Texas 78701-3942

OR2018-03823

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# 696097.

The Texas Board of Nursing (the "board") received a request for information pertaining to a specified incident. 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 section 301.466(a) of the Occupations Code, which provides as follows:

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 generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code.

However, we note, and you acknowledge, the requestor is a representative of the Texas Department of State Health Services (the “DSHS”). The requestor has informed the board that the DSHS seeks the requested information as part of an investigation pursuant to chapter 773 of the Health and Safety Code. Section 773.0612 of the Health and Safety Code provides the DSHS or its representative “is entitled to access to records and other documents . . . that are directly related to . . . emergency medical services personnel to the extent necessary to enforce [chapter 773 of the Health and Safety Code] and the rules adopted under [chapter 773 of the Health and Safety Code].” Health & Safety Code § 773.0612(a). We understand the submitted information pertains to an emergency medical technician licensed under chapter 773 of the Health and Safety Code. Because the submitted information is directly related to an emergency medical technician and the requestor is conducting an investigation under chapter 773, we conclude section 773.0612 of the Health and Safety Code applies to the submitted information. Accordingly, we find there is a conflict between the confidentiality provided by section 301.466 of the Occupations Code and the right of access afforded to the DSHS under section 773.0612 of the Health and Safety Code. Where general and specific provisions are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov’t Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.). Although section 773.0612 of the Health and Safety Code generally allows the DSHS access to information pertaining to emergency medical services personnel, section 301.466 of the Occupations Code specifically protects information created or compiled by the board as part of an investigation by the board. We therefore conclude the confidentiality provided by section 301.466 is more specific than the general right of access provided under section 773.0612. Accordingly, notwithstanding section 773.0612, the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 301.466 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/gw

Ref: ID# 696097

Enc. Submitted documents

c: Requestor
(w/o enclosures)