



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2019

Ms. April Liwanag
Assistant General Counsel
Texas Board of Nursing
333 Guadalupe Street, Suite 3-460
Austin, Texas 78701

OR2019-26395

Dear Ms. Liwanag:

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# 786762 (BON Ref. No. 19-24).

The Texas Board of Nursing (the "board") received a request for all disciplinary records pertaining to a named individual. You state the board will release some information. 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 representative sample of information.¹

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 of the Occupations Code, which provides, in part, the following:

- (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 We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information that that submitted to this office.

(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.

...

(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 submitted information consists of an investigative file involving the named individual. The board explains the information at issue was created or collected as part of the board's investigation of a nurse. We understand none of the submitted information is a type of information contemplated by section 301.466(c). Further, we find the requestor is not entitled to receive this information under section 301.466(b). 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ms. April Liwanag - Page 3

Ref: ID# 786762

Enc. Submitted documents

c: Requestor
(w/o enclosures)