



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 26, 2019

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

OR2019-33448

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# 798820 (Ref. No. 20-1).

The Texas Board of Nursing (the "board") received a request for specified list of information regarding licensed nurses. We understand you released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.137 of the Government Code provides:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

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 those records contain substantially different types of information than that submitted to this office.

- (b) Confidential information described in this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
- (c) Subsection (a) does not apply to an e-mail address:
 - (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
 - (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
 - (3) contained in response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract;
 - (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public; or
 - (5) provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of this code, or receiving orders or decision from a governmental body.
- (d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Id. § 552.137. The e-mail addresses at issue are not a type specifically excluded by section 552.137(c) of the Government Code. Further, although the requestor in this instance is a representative of the United States Army (the "Army") and asserts a right of access to the submitted e-mail addresses pursuant to section 552.137(d), we find the requestor has failed to demonstrate this section requires a governmental body to release information to another governmental body or federal agency. *See id.* § 552.137(d); *cf.* Open Records Decision No. 561 (1990). Accordingly, the board must generally withhold the submitted e-mail address under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

We understand the requestor to assert the board may transfer the requested information to the requestor as an intergovernmental transfer. This office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567

(1990). 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body). Further, this office has concluded, absent a federal law requiring disclosure, a governmental body may not disclose confidential information to a federal agency as an interagency transfer. *See* Open Records Decision No. 650 (1996); *see also* Attorney General Opinions MW-565 at 4 (1982), H-242 at 4 (1974); Open Records Decision No. 561 at 6 (1990).

As noted above, the requestor is a representative of the Army, which is a federal agency. However, neither the board or the Army has informed us of any provision of law, nor are we aware of any, that requires disclosure of the information at issue. Accordingly, we conclude the board must withhold the submitted information under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

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,



Emily Buchanan
Assistant Attorney General
Open Records Division

EBO/rm

Ms. April Liwanag - Page 4

Ref: ID# 798820

Enc. Submitted documents

c: Requestor
(w/o enclosures)