



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2020

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

OR2020-17629

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# 835705 (BON Ref. No. 20-21).

The Texas Board of Nursing (the "board") received a request for a spreadsheet containing certain information pertaining to a specified topic.¹ You state the board released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the requestor asks the board to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See* Open

¹ We note the requestor modified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

Records Decision Nos. 561 at 8-9 (1990), 555 at 1-2. We assume the board has made a good faith effort to do so.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note an individual’s name, education, prior employment, and personal information are not ordinarily private information subject to section 552.101. *See* Open Records Decision Nos. 554 (1990), 448 (1986). Additionally, we note the public generally has a legitimate interest in information relating to public employment and public employees. *See* Open Records Decision Nos. 423 at 2 (1984) (scope of public employee privacy is narrow), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job). Upon review, we find you have failed to demonstrate any of the information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the board may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As no further arguments against disclosure are made, the board must release the submitted information.

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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 835705

Enc. Submitted documents

c: Requestor
(w/o enclosures)