



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2020

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

OR2020-30603

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# 857280 (BON Ref. No. 21-02).

The Texas Board of Nursing (the "board") received a request for information pertaining to a named individual. The board states it is withholding social security numbers pursuant to section 552.147(b) of the Government Code.¹ The board claims some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the claimed exceptions 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. Section 552.101 of the Government Code encompasses section 301.206 of the Occupations Code, which provides:

(a) In this section, "emergency relief program" means a program operated or sponsored by the federal government, the state, or a nonprofit organization to provide nurses to assist in providing health care to victims or potential victims of a disaster or state or local emergency.

¹ Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

(b) A nurse's personal contact information, including e-mail addresses, telephone numbers, and fax numbers, collected by the board for use by an emergency relief program is:

- (1) confidential and not subject to disclosure under Chapter 552, Government Code; and
- (2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than for the purpose of contacting the nurse to assist in an emergency relief program.

Occ. Code § 301.206. Although the board contends the business fax number it marked is confidential under section 301.206, the board has not demonstrated a business fax number is personal contact information for purposes of section 301.206. Accordingly, we conclude the board may not withhold the information it marked under section 552.101 of the Government Code in conjunction with section 301.206 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 301.207 of the Occupations Code, which provides as follows:

The following information that a person submits to the board for a petition for a declaratory order of eligibility for a license or for an application for an initial license or a license renewal under this chapter is confidential to the same extent information collected on a nurse as part of an investigation of a complaint is confidential under Section 301.466:

- (1) information, including diagnosis and treatment, regarding a person's physical or mental condition, intemperate use of drugs or alcohol, or chemical dependency;
- (2) information regarding a person's criminal history; and
- (3) any other information in the petition for declaratory order of eligibility.

Id. § 301.207. The board states the information it marked is confidential under section 301.207. Upon review, we agree the information it marked is confidential under section 301.207 of the Occupations Code. Further, we find 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). Therefore, we conclude the board must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 301.466 of the Occupations Code, which provides, in part:

(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) 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].

Id. § 301.466(a), (c). The board states Attachment B consists of an investigative file involving the individual named in the request. The board explains the information at issue was created or collected as part of the board's investigation of a nurse. The board states, and we agree, none of the information at issue is a type of information contemplated by section 301.466(c). Further, we agree the requestor is not entitled to receive this information under section 301.466(b). *See id.* § 301.466(b). Accordingly, the board must withhold Attachment B under section 552.101 of the Government Code in conjunction with section 301.466(a) of the Occupations Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. Accordingly, the board must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the board must withhold the personal e-mail addresses it marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law

privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the board must withhold the public citizen's date of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the board must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code. The board must withhold Attachment B under section 552.101 of the Government Code in conjunction with section 301.466(a) of the Occupations Code. The board must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The board must withhold the personal e-mail addresses it marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The board must withhold the public citizen's date of birth it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The board must release the remaining 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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/mo

Ref: ID# 857280

Enc. Submitted documents

c: Requestor
(w/o enclosures)