



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 6, 2022

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

OR2022-00526

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# 923621 (ORR# 22-3).

The Texas Board of Nursing (the "board") received a request for the nursing file of a named individual. The board states it is releasing some of the requested information. The board claims some of the submitted information is excepted from disclosure under sections 552.101, 552.137, and 552.147 of the Government Code. We have considered the exceptions the board claims 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 information submitted as Attachment B as part of investigations. The board also states the information at issue 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 Attachment B is confidential under section 301.466(a). Further, you assert 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 withhold Attachment B under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) 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 in Attachment C is confidential under section 301.207 of the Occupations Code. Upon review, we agree the marked information 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) of the Occupations Code. Therefore, the board must withhold the information it marked in Attachment C 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 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.

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* Gov’t Code § 552.137(a)-(c). We note section 552.137(c)(5) states section 552.137(a) does not apply to an e-mail address “provided to a governmental body for the purpose of providing public comment or receiving notices related to an application for a license as defined by Section 2001.003(2) of [the Government Code], or receiving order or decisions from a governmental body.” *Id.* § 552.137(c)(5). Therefore, the board must withhold the personal e-mail address we indicated under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. However, we understand the remaining e-mail address at issue falls within the scope of section 552.137(c). Accordingly, the board may not withhold the remaining e-mail address it marked under section 552.137 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). Accordingly, the board may withhold the social security number it marked under section 552.147 of the Government Code.

In summary, the board must withhold Attachment B under section 552.101 of the Government Code in conjunction with section 301.466(a)(1) of the Occupations Code. The board must withhold the information it marked in Attachment C under section 552.101 of the Government Code in conjunction with section 301.207 of the Occupations Code. 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 withhold the personal e-mail address we indicated under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The board may withhold the social security number it marked under section 552.147 of the Government Code. 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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/jm

Ref: ID# 923621

Enc. Submitted documents

c: Requestor  
(w/o enclosures)