



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 31, 2022

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

OR2022-15501

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# 951032 (BON Ref. No. 22-14).

The Texas Board of Nursing (the "board") received a request for the complete licensure file for a named individual. We understand the board will withhold e-mail addresses of members of the public pursuant to Open Records Decision No. 684 (2009).¹ The board states it will release some of the requested information. The board claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.147 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. This section 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

¹ Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

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.

Occ. Code § 301.207. The board states the information at issue is confidential under section 301.207 of the Occupations Code. Upon review, we agree some of the information at issue 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, except for the information we have marked for release, 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(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). Although the board asserts the information at issue is confidential under section 301.466, the board has failed to demonstrate the information at issue was "compiled" by the board in connection with a complaint and investigation for purposes of this provision. Upon review, we find this information may not be withheld under section 552.101 of the Government Code in conjunction with section 301.466(c) 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 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147(a). Accordingly, the board may withhold the social security number it marked under section 552.147 of the Government Code.

In summary, except for the information we have marked for release, 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 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 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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/mo

Ref: ID# 951032

Enc. Submitted documents

c: Requestor
(w/o enclosures)