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ATTORNEY GENERAL OF TEXAS

August 15, 2022

Mr. Brian Miller
Assistant General Counsel
Texas Board of Nursing
333 Guadalupe Street, Suite 3-460
Austin, Texas 78701

OR2022-24241

Dear Mr. Miller:

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# 966219 (BON Ref. NO. 22-16).

The Texas Board of Nursing (the "board") received a request for all information pertaining to a named individual. You state the board will release some information. You claim 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 you claim 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 an investigation. 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). Therefore, the board must withhold the personal e-mail address it marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

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 it marked 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/mo

Ref: ID# 966219

Enc. Submitted documents

c: Requestor
(w/o enclosures)