



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2022

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

OR2019-26882

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# 970784 (BON Ref. No. 22-17).

The Texas Board of Nursing (the "board") received a request for records pertaining to a named nurse. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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 of the Occupations Code, which provides, in part, the following:

- (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

¹ We note, because section 552.101 can provide a compelling reason to overcome the presumption of openness, we need not address whether the board complied with section 552.301 of the Government Code in requesting a ruling from this office. See Gov't Code §§ 552.301, .007, .302, .352.

(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].

Occ. Code § 301.466(a), (c). You explain the information at issue was compiled by the board as part of the board's investigation of the named nurse. You state none of the submitted information is a type of information contemplated by section 301.466(c). Further, you state the requestor is not entitled to receive this information under section 301.466(b). Accordingly, we conclude the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 301.466(a) of the Occupations Code.

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
Attorney
Open Records Division

MRG/mo

Ref: ID# 970784

Enc. Submitted documents

c: Requestor
(w/o enclosures)