



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2022

Mr. Brian L. Miller
Assistant General Counsel
Texas Board of Nursing
1801 Congress Avenue, Suite 10-200
Austin, Texas 78701

OR2022-37981

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# 988584 (BON Ref. No. 23-5).

The Texas Board of Nursing (the "board") received a request for information pertaining to a named individual, including information pertaining to a specified board action. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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. Section 552.101 encompasses section 301.466 of the Occupations Code, which provides, in relevant part:

(a) A complaint and investigation concerning a nurse under this subchapter and all information and material compiled by the board in connection with the complaint and investigation 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 board employee or agent involved in license holder discipline.

(b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:

- (1) a person involved with the board in a disciplinary action against the nurse;
- (2) a nursing licensing or disciplinary board in another jurisdiction;
- (3) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;
- (4) a law enforcement agency; or
- (5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

(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). Section 301.466 only applies to information created or compiled by the board as part of an investigation by the board. You state, and the submitted documents reflect, the submitted information was created or compiled by the board as part of an investigation. You inform us the submitted information consists of the corrective action taken in the instant case. You state, pursuant to section 301.652(a)(2) of the Occupations Code, a corrective action is not a disciplinary action for purposes of section 301.466(c). *See id.* § 301.652(a)(2); *see also* 22 TAC § 213.32(1). Pursuant to section 301.652(a)(3) of the Occupations Code, the corrective action is subject to disclosure to the same extent as a complaint. Occ. Code § 301.652(a)(3). You further state the submitted information is not the type of information contemplated by section 301.466(c). Based upon these representations and our review, we agree the information at issue is confidential under section 301.466(a) of the Occupations Code and must generally be withheld under section 552.101 of the Government Code on that basis. However, we note the requestor is a representative of the Oregon State Board of Nursing. *See id.* § 301.466(b)(2). Section 301.466(b)(2) provides information subject to section 301.466(a) may be disclosed to a nursing licensing agency or disciplinary board in another jurisdiction. Thus, we find the board has the discretion to release the information at issue to this requestor pursuant to section 301.466(b)(2), notwithstanding the confidentiality of section 301.466(a) of the Occupation Code. Nevertheless, in this instance, we understand the board has chosen not to exercise its discretion under section 301.466(b)(2) of the Occupations Code to release the corrective action. Accordingly, 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/pt

Ref: ID# 988584

Enc. Submitted documents

c: Requestor
(w/o enclosures)