



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 28, 2017

Ms. Loris Jones  
Public Information Officer  
Texas Board of Veterinary Medical Examiners  
333 Guadalupe, Suite 3-810  
Austin, Texas 78701-3942

OR2017-22259

Dear Ms. Jones:

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# 678594.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for two specified cases. You state the board released some information. 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 information made confidential by statute, such as the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the information we marked constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician or information obtained from a medical record. Accordingly, the board must withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA. However, we find you have not demonstrated any of the remaining information you seek to withhold constitutes medical records for purposes of the MPA, and the board may not withhold any of the remaining information on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by former section 801.207 of the Occupations Code. Former section 801.207(b) provides, “[a]n investigation record of the board, including a record relating to a complaint that is found to be groundless, is confidential.” Act of May 17, 1999, 76th Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 1431, 2112 (amended 2017) (current version at Occ. Code § 801.207(b)). We note the information at issue was created prior to September 1, 2017. Although section 801.207(b) of the Occupations Code was amended in 2017 by the 85th Legislature, investigation records created prior to September 1, 2017, are subject to the former version of section 801.207, which was continued in effect for that purpose. *See* Act of May 29, 2017, 85th Leg., R.S., ch. 536, § 27, Tex. Sess. Law. Serv. 1501, 1508 (Vernon). You state under the board's procedures, an investigation file is opened upon receipt of a complaint, and any matters related to that complaint and subsequent investigation become part of the investigation record. You inform us Exhibit C relates to complaints filed with the board and is contained within investigation files. Therefore, the board must withhold Exhibit C under section 552.101 of the Government Code in conjunction with former section 801.207(b) of the Occupations Code.

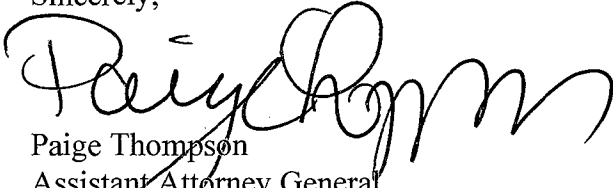
In summary, the board must withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA and Exhibit C under section 552.101 of the

Government Code in conjunction with former section 801.207(b) of the Occupations 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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 678594

Enc. Submitted documents

c: Requestor  
(w/o enclosures)