



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2018

Ms. Elaine Crease
Legal Administrative Assistant
Texas Board of Veterinary Medical Examiners
333 Guadalupe, Suite 3-810
Austin, Texas 78701-3942

OR2018-01800

Dear Ms. Crease:

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# 692994.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for information pertaining to a specified case during a specified time period. 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 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, 2017 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 the submitted information relates to a complaint filed with the board, and this information is contained within an investigation file. Therefore, based on your representations and our review, we conclude the submitted information is generally confidential under former section 801.207(b) of the Occupations Code.

In Open Records Decision No. 683, this office held that although former section 801.207(b) makes the board's investigation records confidential as to the general public, this statute does not prohibit the board from releasing "the complaint to the licensee during the complaint investigation process." Open Records Decision No. 683 at 4 (2009). You state Board Rule 575.28(6) allows a licensee to review the complaint unless doing so would jeopardize an active investigation. We note the board rules under the Texas Administrative Code expressly limit access to the complaint to a licensee under the Veterinary Licensing Act. *Id.*; *see also* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

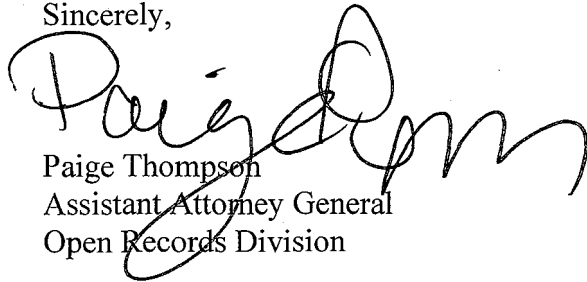
In this instance, the requestor represents the licensee who is the subject of the complaint in the investigation. You have not informed our office whether the request at issue was received during the investigation process. Further, you have not informed our office whether release of the complaint at issue would interfere with the investigation process. Therefore, we must rule conditionally. If the request at issue was received during the investigation process and its release would interfere with an active investigation, the board has the discretion to provide the requestor, as the authorized representative of the licensee, a copy of the complaint, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with former section 801.207(b) of the Occupations Code. If the board did not receive the request at issue during the investigation process, the board must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with former section 801.207(b) 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 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 with a large initial "P".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 692994

Enc. Submitted documents

c: Requestor
(w/o enclosures)