



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 15, 2018

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

OR2018-03715

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# 695991.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for information pertaining to complaints, cease and desist orders, and board orders during specified time periods. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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<sup>1</sup>We note the board did not comply with the requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 some of 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 complaints filed with the board, and this information is contained within investigation files. Therefore, based on your representations and our review, we conclude the investigation records created prior to September 1, 2017, are confidential under section 552.101 of the Government Code in conjunction with former section 801.207(b) of the Occupations Code.

Section 552.101 of the Government Code also encompasses the current version of section 801.207 of the Occupations Code, which provides, in relevant part:

(b) Each complaint, investigation file and record, and other investigation report and all other investigative information in the possession of or received or gathered by the board or the board’s employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or the board’s employees or agents involved in discipline of a license holder.

Occ. Code § 801.207(b). As noted above, 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 remaining information at issue relates to complaints filed with the board and is contained within investigation files. Based on your representations and our review, we conclude the remaining information is confidential under current section 801.207(b) of the Occupations Code, and the board must withhold it under section 552.101 of the Government Code on that basis.

In summary, the investigation records created prior to September 1, 2017, must be withheld under section 552.101 of the Government Code in conjunction with former section 801.207(b) of the Occupations Code. The remaining information is confidential under

current section 801.207(b) of the Occupations Code, and the board must withhold it under section 552.101 of the Government Code on that basis.

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,



Kaelan A. Henze  
Assistant Attorney General  
Open Records Division

KAH/gw

Ref: ID# 695991

Enc. Submitted documents

c: Requestor  
(w/o enclosures)