



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2019

Mr. Stephen White
Staff Attorney
Texas Board of Veterinary Medical Examiners
333 Guadalupe, Suite 3-810
Austin, Texas 78701-3942

OR2019-03815

Dear Mr. White:

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# 749649.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for dates and documentation of specified inspections of a specified clinic and named individuals during a certain time period. You state some of the requested information does not exist.¹ 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 representative sample of information.² We have also received and considered

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We 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.

comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses section 801.207(b) of the Occupations Code, which provides:

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). You assert the submitted compliance inspection forms are confidential pursuant to section 801.207(b). We note, however, subsection 801.207(b) is contained in subchapter E of chapter 801 the Occupations Code, which is titled “Public Access and Information; Complaint Procedures[.]” Additionally, this subchapter discusses the board's responsibilities regarding the acceptance of complaints, rules regarding complaint investigations and dispositions, priorities of complaints, and the disposition of complaints. *See id.* §§ 801.201 - .209. Upon review, we find the board has failed to demonstrate the information at issue is confidential pursuant to section 801.207(b) of the Occupations Code and it may not be withheld under section 552.101 of the Government Code on that basis. *Cf. Paxton v. Tex. Dep't of State Health Servs.*, 500 S.W.3d 702, 706 (Tex. App—Austin 2016, no pet.) (although isolated reading of section 531.1021(g) of Government Code suggests it applies to any Office of Inspector General (“OIG”) investigation, confidentiality of OIG investigations provided by section 531.1021(g) must be read in context of OIG's enabling provisions and, thus, extended only to OIG investigations concerning fraud, waste, and abuse in provision and delivery of health and human services in state). Therefore, the board must release the submitted 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, 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 that reads "Emily Kunst". The signature is written in a cursive style with a large, looped "E" and a long, sweeping "t".

Emily Kunst
Assistant Attorney General
Open Records Division

EK/som

Ref: ID# 749649

Enc. Submitted documents

c: Requestor
(w/o enclosures)