



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 1, 2019

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

OR2019-11587

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# 762737.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for all complaints against the requestor's client. 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. We have also received and considered 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).

Initially, we note some of the submitted information is not responsive to the present request because it does not pertain to complaints against the requestor's client. This ruling does not address the public availability of the non-responsive information, which we have marked, and the board need not release it in response to this request.

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. 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 responsive information pertains to complaints filed with the board prior to September 1, 2017. Although section 801.207(b) of the Occupations Code was amended in 2017 by the 85th Legislature, investigation records pertaining to a complaint filed with the board 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 some of the responsive information relates to complaints filed with the board prior to September 1, 2017, and this information is contained within investigation files. Although we understand the requestor to assert a right of access to the information at issue pursuant to former section 575.28 of title 22 of the Texas Administrative Code, we note this rule was repealed by the board on May 15, 2018. *See* 43 Tex. Reg. 3099 (2018) (repealing former 22 T.A.C. § 575.28). Therefore, based on your representations and our review, we conclude the information at issue is confidential under former section 801.207(b). Accordingly, the board must withhold the responsive information pertaining to complaints filed prior to September 1, 2017, 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 information made confidential by the current section 801.207 of the Occupations Code, which provides,

(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). The remaining responsive information pertains to complaints filed with the board after September 1, 2017. As noted above, the board states under its 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. The board informs us the remaining responsive information relates to complaints filed with the board and this information is contained within investigation files. Although we understand the requestor to assert a right of access to the information at issue pursuant to former section 575.28 of title 22 of the Texas Administrative Code, as noted above, this rule was repealed by the board on May 15, 2018. *See* 43 Tex. Reg. 3099 (2018) (repealing former 22 T.A.C. § 575.28). Therefore, based on your representations and our review, we

conclude the remaining responsive information is confidential under current section 801.207(b), and the board must withhold it under section 552.101 of the Government Code on that basis.

In summary, the board must withhold the responsive information pertaining to complaints filed prior to September 1, 2017, under section 552.101 of the Government Code in conjunction with former section 801.207(b) of the Occupations Code. The board must withhold the remaining responsive information under section 552.101 of the Government Code in conjunction with 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/jxd

Ref: ID# 762737

Enc. Submitted documents

c: Requestor
(w/o enclosures)