



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 29, 2019

Ms. Michelle Griffin  
General Counsel  
Texas Board of Veterinary Medical Examiners  
333 Guadalupe Street, Suite 3-810  
Austin, Texas 78701-3942

OR2019-14203

Dear Ms. Griffin:

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# 767727 (TBVME Ref. No. 031119).

The Texas Board of Veterinary Medical Examiners (the "board") received a request for five categories of information pertaining to contracts and services provided by Professional Recovery Network ("PRN") to licensed veterinarians. The board informs us it has released some information to the requestor. The board claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the board indicates release of the submitted information may implicate the proprietary interests of PRN. Accordingly, the board provides documentation showing it notified PRN of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from PRN. We have reviewed the submitted information and the submitted arguments.

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. This section encompasses information protected by other statutes, such as

section 467.007 of the Health and Safety Code, which makes confidential information related to peer assistance programs. Section 467.007 reads as follows:

(a) Any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this chapter is confidential. Except as prescribed by Subsection (b) or by Section 467.005(c), a person may not disclose that information, report, or record without written approval of the impaired professional or other interested person. An order entered by a licensing or disciplinary authority may be confidential only if the licensee subject to the order agrees to the order and there is no previous or pending action, complaint, or investigation concerning the licensee involving malpractice, injury, or harm to any member of the public. It is the intent of the legislature to encourage impaired professionals to seek treatment for their impairments.

(b) Information that is confidential under Subsection (a) may be disclosed:

(1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom the authority has referred to a peer assistance program under Section 467.006(a) or (b);

(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;

(3) to qualified personnel for bona fide research or educational purposes only after information that would identify a person is removed;

(4) to health care personnel to whom an approved peer assistance program or a licensing or disciplinary authority has referred the impaired professional;  
or

(5) to other health care personnel to the extent necessary to meet a health care emergency.

Health & Safety Code § 467.007. Additionally, section 467.005(c) provides “[a]n approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a professional who the program knows or suspects is impaired and any relevant information concerning that professional.” *Id.* § 467.005(c).

The board states Attachments E and F are related to individuals’ participation in a peer assistance program. Additionally, the board states section 801.157 of the Occupations Code requires the board to establish or approve a peer assistance program for veterinarians that complies with chapter 467 of the Health and Safety Code. *See* Occ. Code § 801.157(a). We

note the board is a licensing or disciplinary authority for purposes of chapter 467 of the Health and Safety Code. *See* Health & Safety Code § 467.001(4), (5) (defining “licensing or disciplinary authority” and “professional” for purposes of chapter 467); Bus. Orgs. Code §§ 1.008(m) (describing which provisions are included in The Texas Professional Corporation Law), 301.003(5), (8) (defining “professional individual” and “professional organization” under The Texas Professional Corporation Law). Thus, we understand the information at issue consists of information received, gathered, or maintained by an approved peer assistance program or a licensing or disciplinary authority under chapter 467 of the Health and Safety Code. The board states none of the exceptions in section 467.007 or section 467.005(c) are applicable in this instance. Based on the board’s representations and our review, we find the information at issue is confidential pursuant to section 467.007 of the Health and Safety Code. Accordingly, the board must withhold Attachments E and F pursuant to section 552.101 of the Government Code in conjunction with section 467.007(a) of the Health and Safety Code.<sup>1</sup>

PRN asserts Attachment D is protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. PRN states it has competitors. In addition, PRN states release of the information at issue would give its competitors an unfair advantage. After review of the information at issue and consideration of the arguments, we find PRN has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the board may withhold Attachment D under section 552.104(a) of the Government Code.<sup>2</sup>

In summary, the board must withhold Attachments E and F pursuant to section 552.101 of the Government Code in conjunction with section 467.007(a) of the Health and Safety Code. The board may withhold Attachment D under section 552.104(a) of the Government 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.

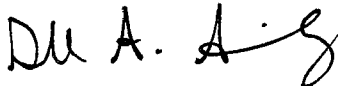
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<sup>1</sup>As our ruling is dispositive, we need not address the board’s remaining argument against disclosure of this information.

<sup>2</sup>As our ruling is dispositive, we need not address PRN’s remaining arguments against disclosure of this information.

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 "Gerald A. Arismendez". The signature is written in a cursive style with a large, stylized initial "G".

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/jxd

Ref: ID# 767727

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)