



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 20, 2019

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

OR2019-16839

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# 771578.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for all complaints filed against a named individual. The board claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the board claims and reviewed the submitted information.

Initially, we note the requestor seeks "tangible things enclosed with, attached to or referenced within the complaint[s]." The Act applies to "public information," which is defined in section 552.002 of the Government Code. Section 552.002 provides, in pertinent part, the following:

(a) In this chapter, "public information" means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). This office has ruled tangible physical items are not "information," as that term is contemplated under the Act. *See* Open Records Decision No. 581 (1990). Thus, tangible items are not public information for purposes of section 552.002 of the Government Code, and the Act does not require the board to make tangible items available to the requestor. *See* Gov't Code § 552.021.

Next, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the date the board received the instant request for information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983). This ruling does not address the public availability of any information that is not responsive to the request and the board is not required to release such information 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." Gov't Code § 552.101. This exception 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)). A portion of the responsive information pertains to a complaint 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 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, Tex. Sess. Law. Serv. 1501, 1508 (Vernon). 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 information at issue relates to a complaint filed with the board and this information is contained within investigation files. Based on these representations and our review, we conclude the investigation records pertaining to a complaint filed prior to September 1, 2017, are confidential under former section 801.207(b), and the board must withhold that information under section 552.101 of the Government Code on that basis.

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 a complaint 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 information relates to a complaint filed with the board and this information is contained within investigation files. Based on these representations and our review, we conclude the information at issue 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 investigation records pertaining to a complaint filed with the board 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 current 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](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,



Lecelle Clarke  
Attorney  
Open Records Division

LC/gw

Ref: ID# 771578

Enc. Submitted documents

c: Requestor  
(w/o enclosures)