



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 21, 2022

Mr. John Hargis
General Counsel
Texas Board of Veterinary Medical Examiners
333 Guadalupe, Suite 3-810
Austin, Texas 78701

OR2022-17699

Dear Ms. Hargis:

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# 955098 (Reference No. CP22-023).

The Texas Board of Veterinary Medical Examiners (the "board") received a request for all documents and related items pertaining to a specified complaint filed 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.

Initially, we note the requestor seeks "tangible things attached to, enclosed with, or referred to 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 relevant part, as follows:

(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.

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(b) 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.

Act of May 29, 2017, 85th Leg., R.S., S.B. 319, §§ 11, 27 (change to section 801.207(b) applies to a complaint filed with the board on or after September 1, 2017); Act of May 26, 2021, 87th Leg., R.S., H.B. 3442, § 2 (a complaint filed with the board before September 1, 2021, is governed by the law in effect on the date the complaint was filed and former section 801.207(b) is continued in effect for that purpose). 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. Further, the board informs us the submitted information relates to a complaint filed with the board after September 1, 2017, and this information is contained within the investigation files. The board informs us section 801.207(d) does not apply. *See* Occ. Code § 801.207(d) (establishing circumstances in which the board shall provide the license holder with access to information). Therefore, based upon these representations and our review, we conclude the submitted information is confidential under former 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jm

Ref: ID# 955098

Enc. Submitted documents

c: Requestor
(w/o enclosures)