



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2009

Mr. Dewey E. Helmcamp III  
Executive Director  
Texas Board of Veterinary Medical Examiners  
333 Guadalupe Suite 3-810  
Austin, Texas 78701-3942

OR2009-05336

Dear Mr. Helmcamp:

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# 340894.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for information relating to the requestor, a named business entity, and "why th[e b]oard required [the requestor] to obtain a license as a wholesale distributor of prescription drugs." You state that the board has no such requirement.<sup>1</sup> You indicate that some of the requested information has been released. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Initially, we address the board's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See Gov't Code* § 552.301(a). Section 552.301(b) requires the governmental body to request a decision and claim its exceptions to disclosure not later than the tenth business day after the date of

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

its receipt of the written request for information. *See id.* § 552.301(b). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ).

The board appears to have received the instant request for information on February 2, 2009; therefore, the board's ten-business-day deadline to request this decision was February 17. This office received the board's request for this decision via interagency mail on February 19. You have not provided evidence sufficient to establish that the board placed its request for this decision in the interagency mail on or before February 17. *See* Gov't Code § 552.308(b) (agency must demonstrate timeliness of submission by interagency mail). Thus, you have not demonstrated that the board complied with section 552.301(b) in requesting this decision, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will address that exception.

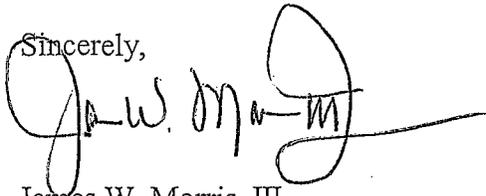
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 801.207 of the Occupations Code. Section 801.207(b) provides that "[a]n investigation record of the board, including a record relating to a complaint that is found to be groundless, is confidential." Occ. Code § 801.207(b). You state that the submitted information is contained in an investigation file. Based on your representation and our review of the information at issue, we conclude that the submitted information is confidential under section 801.207 of the Occupations Code and must be withheld from disclosure under section 552.101 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.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is stylized with a large, looped initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 340894

Enc: Submitted documents

c: Requestor  
(w/o enclosures)