



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2010

Ms. Loris Jones
Public Information Officer
Texas Board of Veterinary Medical Examiners
333 Guadalupe, Suite 3-810
Austin, Texas 78701-3942

OR2010-02740

Dear Ms. Jones:

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# 371255.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for a response to a specified complaint. 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 reviewed the submitted information. We have also received and considered comments submitted by the requestor. Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the board's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative

samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The board states it received the request for information on November 30, 2009. However, the submitted documentation also contains a request for the same information submitted by the same requestor on May 11, 2006. Pursuant to section 552.303 of the Government Code, we notified the board by letter that we needed additional information explaining whether the board responded to the May 11, 2006 request and in what fashion. *See id.* § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render a decision). As of the date of this ruling, you do not explain whether the board responded to the May 11, 2006 request. Further, the requestor states the board did not respond to the May 11, 2006 request. Accordingly, we find the original request was made on May 11, 2006. As the board did not request a ruling from this office until December 11, 2009 or submit a copy of the information requested until December 22, 2009, we find the board failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider whether or not any of the submitted information is excepted from disclosure under the Act.

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. 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). In Open Records Decision No. 683 (2009), this office held that although section 801.207(b) makes the board's investigation records confidential as to the general public, this statute "does not prohibit the board from releasing the complaint to the licensee *during the complaint investigation process.*" ORD 683 at 4 (emphasis added). Furthermore, section 801.207 does not prohibit the board from releasing "to the complainant, as a party to the complaint, a copy of the licensee's response *during the investigation process.*" *Id.* at 5 (emphasis added).

You state pursuant to the board's procedures, an "investigation file is opened upon receipt of a complaint[.]" You also indicate the submitted information relates to a complaint filed with the board and is maintained within the board's investigation files. Thus, the board states the submitted information is confidential pursuant to section 552.101 in conjunction with section 801.207. However, the requestor, the complainant in the investigation, relies on Open Records Decision No. 683 and argues that the board has the authority to release a copy of the response to him because his request was made during the investigation process. We note that Open Records Decision No. 683 does not require the release of the licensee's response to the complainant but permits its release to the complainant during the investigation process. Further, the board has informed our office that the investigation process for the requestor's complaint has concluded. Accordingly, we find the submitted information is confidential under section 801.207 of the Occupations Code and must be withheld 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, 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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 371255

Enc. Submitted documents

c: Requestor
(w/o enclosures)