



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2015

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

OR2015-26017

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# 590331 (TBVME15-10-001).

The Texas Board of Veterinary Medical Examiners (the "board") received a request for a complaint and all related documents for a specified case. 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. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

The requestor, in comments submitted to this office, contends the board did not comply with the requirements of section 552.301(b) of the Government Code. 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 that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Gov't Code § 552.302; 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); Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos. 630 at 3, 325 at 2* (1982). Because the board's claim under section 552.101 can provide a compelling reason

to withhold information, we need not determine whether the board complied with section 552.301(b).

Section 552.101 of the Government Code exempts 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 other statutes, such as section 801.207 of the Occupations Code. 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.” Occ. Code § 801.207(b). You inform us, under the board’s procedures, an investigation file is opened upon receipt of a complaint against a licensee or based on information gathered during a compliance inspection, and any matters related to that complaint and subsequent investigation become part of the investigation record. You state the submitted information, in the ordinary course of the board’s business, would be contained within an investigation file. You explain the matter at issue is still under investigation. Therefore, based on your representations and our review, we conclude the submitted information is confidential under section 801.207(b) of the Occupations Code.

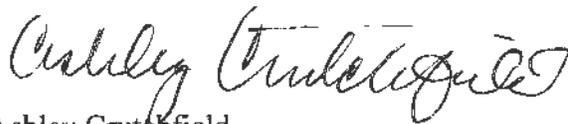
In Open Records Decision No. 683 (2009), this office held that although section 801.207(b) makes the board's investigation records confidential as to the general public, this statute does not prohibit the board from releasing “to the licensee, as a party to the complaint, a copy of the licensee's response during the complaint investigation process.” Open Records Decision No. 683 at 5 (2009). You state Board Rule 575.28(6) allows a licensee to review the complaint unless doing so would jeopardize an active investigation. We note the board rules under the Texas Administrative Code expressly limit access to the complaint to a licensee under the Veterinary Licensing Act. 22 T.A.C. § 575.28(6) (Complaints-Investigations); *see id.* § 575.1 (incorporating the definitions contained in the Veterinary Licensing Act); *see also* Open Records Decision Nos. 683 at 4 (2009) (board rules require release of complaint only to party to complaint who is licensee), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

You inform us the requestor is a party to the complaint but is not a licensee under the Veterinary Licensing Act. *See* Occ. Code § 801.002 (defining professions licensed under the Veterinary Licensing Act). Upon review, we conclude the requestor, as a non-licensee under the Veterinary Licensing Act, does not have access to the complaint under board rules. Accordingly, we conclude the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with 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, 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,



Ashley Crutenfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 590331

Enc. Submitted documents

c: Requestor
(w/o enclosures)