



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 18, 1991

Mr. David J. Freeman
Executive Secretary
Texas Racing Commission
P.O. Box 12080
Austin, Texas 78711-2080

OR91-576

Dear Mr. Freeman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13843.

You inform us that the Texas Racing Commission (the commission) has received three requests for information relating to the investigations and disciplinary hearings of certain veterinary doctors. The first request is for a copy of the minutes of a meeting that included a disciplinary hearing of a particular veterinarian and for copies of all associated hearing papers, including a negotiated settlement, complaint affidavit, findings and facts, and board orders. The second request is essentially a reiteration and clarification of the first: no additional information is requested. The third request is for documents regarding two racetracks during a specified period of time, specifically all complaints against veterinarians licensed by the commission, responses of the veterinarians to those complaints, the commission's disposition of those complaints, and letters, orders, or reports advising the complainants of the disciplinary action taken. You advise us that much of the requested information has been disclosed. You claim, however, that certain information that relates to investigatory files is excepted by sections 3(a)(1), 3(a)(3), and 3(a)(8). You also claim that handwritten notes made by the commission's chief veterinarian are excepted from required public disclosure by section 3(a)(11).

Section 2.15 of the Texas Racing Act, article 179e, V.T.C.S. makes

investigatory files of the commission confidential. It provides in pertinent part that:

The contents of the investigatory files of the commission . . . are not public records and are confidential except in a criminal proceeding or in a hearing conducted by the commission.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You have submitted to us for review contents of an active investigatory file and an inactive investigatory file, attached as Exhibits G and H, respectively. These files may be withheld from required public disclosure under section 3(a)(1) as information deemed confidential by law. *See generally* Open Records Decision Nos. 548 (1990); 522 (1989) (copies enclosed). Because we resolve this issue under section 3(a)(1), we need not address the applicability of sections 3(a)(3) and 3(a)(8) to the investigatory files.

You also seek to withhold complaints and anonymous tips that are not part of investigatory files under section 3.12 of the Texas Racing Act and section 3(a)(1) of the Open Records Act. Section 3.12 provides:

The commission's rules shall allow anonymous reporting of violations of this Act or of rules adopted by the commission.

Section 323.2 of title 16 of the Texas Administrative Code provides for the anonymous reporting of violations of the Texas Racing Act and states in pertinent part:

(b) In receiving complaints under this section, the commission may not require the complainant to:

(1) reveal the complainant's name

Section 3.12 of the Texas Racing Act does not provide for the confidentiality of complaints of information relating to persons who report violations of this act. Rather, this section authorizes the commission to adopt rules to provide for the anonymous reporting of violations. Therefore, information including complaints and anonymous tips that are not part of investigatory files may not be withheld from required public disclosure under section 3(a)(1) and must be released.

Finally, you claim that the handwritten notes of the chief veterinarian are excepted from required public disclosure by section 3(a)(11), which excepts interagency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policy-making or deliberative process. Open Records Decision 538 (1990). Facts and written observations of fact that are severable from material excepted under section 3(a)(11) must be disclosed. Open Records Decision No. 582 (1990). Having examined the handwritten notes of the chief veterinarian (Exhibit C), we conclude that they may not be withheld from required public disclosure under section 3(a)(11).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-576.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SG/GK/lcd

Enclosures: Open Records Decision Nos. 548; 522 (1987)

Ref.: ID# 13843

cc: Mr. Ellis Gilleland
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