



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1995

Mr. John W. Youngblood
Staff Attorney
Texas A&M University System
301 Tarrow, Sixth Floor
State Headquarters Bldg.
College Station, Texas 77843-1230

OR95-027

Dear Mr. Youngblood:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30058.

Texas A&M University (the "university") received a request for certain records from the university's College of Veterinary Medicine. You state that the requestor's female ostrich, known as Mae West, died while being treated at the university. The requestor subsequently filed a lawsuit against the university complaining of negligence in connection with Mae West's death. The requestor has filed an open records request for the following records from the university:

- (A) All diagnoses of Ratite birds [ostriches, emus, and others] that you have had in your possession or custody.
- (B) All records of Ratite birds that you have had in your possession or custody that have died in your facilities.
- (C) All records of Ratite birds that you have [had] in your possession or custody that were injured in your facilities.
- (D) All seminar outlines given for public seminars on the subject of Ratite birds, including all manuals or course material provided.

- (E) All records of design, manufacture, repair and complaints regarding the structure of any storage pen where Ratites are kept while in your possession or custody.

You state that you do not have any records that would be responsive to C and E. We note that chapter 552 only applies to existing information and does not require a governmental body to prepare new information or to prepare information in a form the requestor demands. See Open Records Decision No. 572 (1990) at 1. However, you have submitted to this office for review representative samples of information that is otherwise responsive to the request.¹ You contend that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.103(a).

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The university has met its burden of showing that litigation is pending by providing the court documents concerning that lawsuit. Our review of the information submitted to this office shows that it is related to the litigation. Since the information at issue is related to the pending litigation, that information may be withheld from disclosure pursuant to section 552.103(a).

The applicability of section 552.103(a) usually ends once the litigation has concluded or after information has been obtained by all parties to the litigation through discovery or otherwise. Open Records Decision No. 349 (1982) at 2; Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. However, some of the information at issue may not be subject to public disclosure even after the litigation has concluded or the opposing party to the litigation has seen the information if it is made confidential pursuant to section 552.101 of the Government Code, in conjunction with provisions of the Veterinary Licensing Act, article 8890, V.T.C.S.

Section 552.101 provides an exception for information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 2A of article 8890, V.T.C.S., provides that a "veterinarian-client-patient" relationship exists under certain circumstances. Section 18E(a) provides for confidentiality within this relationship:

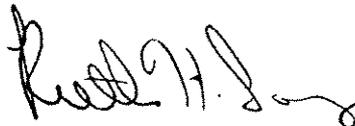
¹We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted.) This open records letter does not reach, and therefore does not authorize, the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

A veterinarian may not violate the confidential relationship between the veterinarian and a client and may not be required to disclose any information concerning the veterinarian's care for an animal except on written authorization or another form of waiver executed by the client or on receipt by the veterinarian of an appropriate court order or subpoena.

Records that are subject to section 18E may be released only as provided under the Veterinary Licensing Act. *See* Gov't Code § 552.352.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MRC/rho

Ref.: ID# 30058

Enclosures: Submitted documents

cc: Mr. Don Ray George
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(w/o enclosures)