



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2012

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

OR2012-01239

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# 444795.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for six categories of information related to a named veterinarian and a specified case number. You state some of the requested information has been released. You claim the rest of 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 information you submitted.

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 section encompasses information other statutes make confidential. You claim 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 indicate the information at issue is related to a complaint filed with the board and the board's investigation of the complaint. Based on your representations and our review, we conclude the information at issue is generally confidential under section 801.207 of the Occupations Code. *See generally* Open Records Decision No. 683 (2009).

In this instance, however, the information at issue includes the requestor's client's medical records, which are governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on receipt of signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked the information at issue that constitutes medical records governed by the MPA. In this instance, the requestor is an attorney for the individual to whom the marked medical records pertain. As such, the requestor may have a right of access to his client's medical records under the MPA. *See Occ. Code* § 159.005(a)(2).

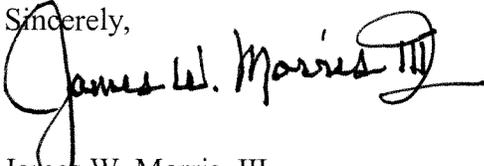
Thus, there is a conflict between the provisions of section 801.207 of the Occupations Code and those of the MPA. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 801.207 generally makes the board's investigation records confidential, the MPA specifically permits release of medical records to certain parties under certain circumstances. We therefore conclude that notwithstanding the provisions of section 801.207 of the Occupations Code, the marked medical records must be released to the requestor if the board receives consent that complies with

section 159.005(a)(2) of the MPA. In that event, the board must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 801.207 of the Occupations Code. If the board does not receive consent that complies with the MPA, then the information at issue must be withheld in its entirety under section 552.101 in conjunction with section 801.207.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, stylized initial "J".

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

JWM/em

Ref: ID# 444795

Enc: Submitted documents

c: Requestor
(w/o enclosures)