



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2012

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

OR2012-18918

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# 471990.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for information regarding a specified case file. You claim some 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 submitted information.

Initially, we must address the board's obligations under the Act. Section 552.301 of the Government Code 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* Gov't Code § 552.301(b). In this instance, you state the board received the request for information on September 5, 2012. Thus, the board was required to request a ruling from this office by September 19, 2012. This office received your request for a ruling via interagency mail on September 20, 2012. However, the board has provided no evidence this communication was deposited into the interagency mail within the applicable deadline. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the board failed to comply with the requirements of section 552.301(b).

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. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 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). 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). You raise section 552.101 of the Government Code for portions of the submitted information. As section 552.101 can provide a compelling reason for non-disclosure, we will address your arguments under that section. Additionally, we note some of the submitted information is subject to section 552.137, which can also provide a compelling reason for non-disclosure.¹ Accordingly, we will also address the applicability of that section to the submitted information.

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 other statutes make confidential, such as 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 confidential under section 801.207(b) of the Occupations Code and must be withheld from the requestor on that basis under section 552.101 of the Government Code.

Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov’t Code § 552.137(a)-(c). The e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). Accordingly, the board must withhold the e-mail addresses we have marked under section 552.137, unless the owners affirmatively consent to their disclosure.

In summary, the board must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 801.207(b) of the Occupations Code. The board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and the board must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners consent to their disclosure. The remaining information must be released.

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 471990

Enc. Submitted documents

c: Requestor
(w/o enclosures)