



ATTORNEY GENERAL OF TEXAS
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November 24, 2009

Mr. Dewey E. Helmcamp, III, J.D.
Executive Director
Texas Board of Veterinary Medical Examiners
333 Guadalupe Street, Suite 3-810
Austin, Texas 78701-3942

Open Records Decision No. 683

Re: Whether information relating to a complaint filed against a licensed veterinarian is subject to disclosure to the licensee or the general public (ORQ-68)

Dear Mr. Helmcamp:

You ask several questions about the disclosure of information relating to complaints filed with the Texas Board of Veterinary Medical Examiners (the "Board").¹ You first ask whether, as part of the Board's investigative process, the Board may release a copy of a complaint to the licensee against whom the complaint is filed. Request Letter, *supra* note 1, at 1, 4.

Section 801.207 of the Occupations Code provides as follows:

§ 801.207. Public Record; Exception

(a) Except as provided by Subsection (b), a board record is a public record and is available for public inspection during normal business hours.

(b) An investigation record of the board, including a record relating to a complaint that is found to be groundless, is confidential.

¹See Letter from Mr. Dewey E. Helmcamp, III, J.D., Executive Director, Texas Board of Veterinary Medical Examiners, to Honorable Greg Abbott, Attorney General of Texas (July 11, 2008) (on file with the Open Records Division, also available at www.texasattorneygeneral.gov). You state the Board has received no specific request from individuals for information on these matters. *See id.* at 1.

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TEX. OCC. CODE ANN. § 801.207 (Vernon 2004). Thus, under section 801.207, the Board's records are "public records" available for "public inspection" with the exception of its "investigation record[s]," which are "confidential." *Id.* You indicate in your request for this decision, as well as in a 2006 request to this office for a ruling on the required public disclosure of requested information under the Public Information Act (the "PIA"), chapter 552 of the Government Code, that the Board considers a complaint to be part of the investigation record. Request Letter, *supra* note 1, at 2; Tex. Att'y Gen. OR2006-10465, at 2 (noting Board's statement that "the complaint is placed in the investigative file" and is "a crucial part of the investigation record"). This office has determined that complaints filed with the Board are investigation records that are confidential under section 801.207(b) and therefore excepted from required public disclosure under the PIA, specifically section 552.101, which excepts from required public disclosure information considered confidential by law. Tex. Att'y Gen. OR2006-10465 at 2; TEX. GOV'T CODE ANN. § 552.101 (Vernon 2004); *see also id.* § 552.352(a) (providing criminal penalties for distribution or misuse of confidential information). However, your first question is not whether the PIA requires the Board to release a copy of the complaint to a member of the public who submits a written request for a copy of it, but whether the Board may lawfully release the complaint to a licensee in the course of investigating a complaint. The Board's position, you state, is that an exception to the confidentiality of section 801.207(b) exists for the parties involved in the complaint process "in order for the Board's regulatory function[] to . . . exist."² Request Letter, *supra* note 1, at 3.

The Board must "dispose of each complaint in a timely manner" and "establish a schedule for conducting each phase of the complaint process" within 30 days of receipt of a complaint. TEX. OCC. CODE ANN. § 801.206(a) (Vernon 2004). You explain that when a standard of care complaint is filed with the Board, the case is assigned to an investigator, who then requests relevant medical records from the licensee. Request Letter, *supra* note 1, at 2. After the investigator receives the medical records, section 575.28(6) of title 22 of the Administrative Code requires the investigator to send a copy of the complaint to the licensee along with a request that the licensee respond to the complaint in writing within 21 days of receipt of the complaint. 22 TEX. ADMIN. CODE § 575.28(6) (2009) (Tex. Bd. of Veterinary Med. Exam'rs, Complaints-Investigations). We note that the Board's rules have required the investigator to release the complaint to the licensee since 1994. 18 Tex. Reg. 8098 (1993), *adopted* 19 Tex. Reg. 1656 (1994) (former 22 Tex. Admin. Code § 575.27 (b)(2)(B) (1995)) (amended 2001, 2004, 2005, 2007 and 2007) (current version proposed 33 Tex. Reg. 2647-48 (2008), *adopted* 33 Tex. Reg. 5528 (2008) (re-numbering from Tex. Admin. Code § 575.27 (b)(2)(B) to Tex. Admin. Code § 575.28(6)).

²You indicate the "parties to the complaint process" include the license holder, the complainant and a reviewing veterinarian. *See* Request Letter, *supra*, note 1, at 2, 3; *see also* 22 TEX. ADMIN. CODE §§ 575.28(7) (2009) (Tex. Bd. of Veterinary Med. Exam'rs, Complaints-Examinations) (permitting investigator to contact second opinion or consulting veterinarian), 28(8)(D) (requiring executive director or director's designee to invite licensee and complainant to informal conference to discuss complaint).

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The primary goal in construing a statute is to ascertain and give effect to the legislature's intent in enacting it. *Leland v. Brandal*, 257 S.W.3d 204, 206 (Tex. 2008). A provision must be construed in the context of the entire statute of which it is a part to reach the true legislative intent. *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001); see also TEX. GOV'T CODE ANN. § 311.011(a) (Vernon 2005) (words and phrases are to be read in context). Thus, we consider subsection (b) of section 801.207 with subsection (a) and other provisions in subchapter E. While subsection (b) makes confidential the Board's investigation records without exception, subsection (a) declares the Board's records to be "public record[s]" subject to "public inspection." TEX. OCC. CODE ANN. § 801.207(a) (Vernon 2004). The repeated use of the word, "public," in section 801.207(a) echoes the word as used throughout the PIA. See, e.g., TEX. GOV'T CODE ANN. § 552.021 (Vernon 2004) ("Public information is available to the public at a minimum during the normal business hours of the governmental body."). "The purpose of the . . . [PIA] is to prescribe the conditions under which members of the general public can obtain information from a governmental body." Tex. Att'y Gen. Op. No. JM-119 (1983) at 2 (emphasis in original). In addition, while section 801.207(a), like the PIA, concerns "public" records and "public" inspection, several other provisions in subchapter E of chapter 801, refer to "parties to the complaint," so as to distinguish parties to the complaint from the general public. See TEX. OCC. CODE ANN. §§ 801.204(a) (requiring Board to maintain information about "parties to the complaint"); .206(b) (requiring Board to notify "[e]ach party to the complaint" of projected time requirements for complaint); .206(c) (requiring Board to notify "complaint parties" of status of complaint until final disposition). Thus, considered in context with other provisions in subchapter E, the Board's construction of subsection (b) as prohibiting the release of information to a member the "public" under the PIA, while at the same time permitting an investigator to provide information to a party to the complaint, is not unreasonable.

Additionally, the Board's construction furthers the legislative goal of chapter 801 that the Board effectively regulate the practice of veterinary medicine by facilitating an efficient investigative process that protects the rights of the parties to the complaint. TEX. OCC. CODE ANN. §§ 801.001 - .509 (Vernon 2004 & Supp. 2008). Chapter 801 requires the Board to protect the public and deny a license to or impose discipline on a person who engages in certain prohibited acts. *Id.* §§ 801.151(c)(1), 801.402. In fulfilling these duties, specifically with regard to resolving complaints, the Board must maintain a system to promptly and efficiently act on each complaint filed with the Board. *Id.* § 801.204. The Board must also provide procedures for giving appropriate consideration to and resolving complaints by informal conference at which both the complainant and the license holder must be given an opportunity to be heard. *Id.* § 801.408; 22 TEX. ADMIN. CODE §§ 575.28 (2009) (Tex. Bd. of Veterinary Med. Exam'rs, Complaints-Investigations), 575.29 (Tex. Bd. of Veterinary Med. Exam'rs, Informal Conferences).

Under the Board's rules, the licensee must respond to the complaint during two phases of the investigative process. See 22 TEX. ADMIN. CODE §§ 575.28(6) (2009) (Tex. Bd. of Veterinary Med. Exam'rs, Complaints-Investigations) (requiring licensee to respond

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to complaint during investigation process), 575.29(d) (Tex. Bd. of Veterinary Med. Exam'rs, Informal Conferences) (requiring licensee to respond to allegations during informal conference). The Board explains that without review of the complaint, a licensee cannot adequately respond to the specific points in an allegation. Request Letter, *supra*, note 1, at 3. Due process at a minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Ray v. Tex. State Bd. of Pub. Accountancy*, 4 S.W.3d 429, 433 (Tex. App.—Austin 1999, no pet.). A construction of section 801.201(b) that would treat the Board's release of the complaint to the licensee for the purpose of obtaining the licensee's response as a violation of the PIA would impede the Board's ability to promptly and efficiently investigate a complaint and ensure that the rights of the parties to the complaint are preserved during the investigation process. See TEX. GOV'T CODE ANN. § 552.352(a) (Vernon 2004) (providing penalties for distribution of information considered confidential under PIA).

The Legislature charged the Board with administering chapter 801 and authorized it to adopt rules relating to the investigation of complaints. *Id.* §§ 801.151, .205 (Vernon 2005). The construction placed upon subsection 801.207(b) by the Board, as the agency charged with its implementation, is entitled to great weight, particularly when the construction is long-standing, so long as the construction is reasonable and does not contradict the plain language of the statute. *Tarrant County Appraisal Dist. v. Moore*, 845 S.W.2d 820, 823 (Tex. 1993); see TEX. GOV'T CODE ANN. § 311.023(6) (Vernon 2005) (administrative construction of statute is matter for court's consideration in construing statutes). For the reasons outlined above, we believe the Board's long-standing construction, as evidenced by its rule, adopted in 1994, requiring the investigator to release the complaint to the licensee as a party to the complaint, is reasonable and does not contradict the language of the statute. Thus, in answer to your first question, we conclude section 801.207 does not prohibit the Board from releasing the complaint to the licensee during the complaint investigation process.³

You next ask whether the complaint and the licensee's response to it are confidential as to any of the following three individuals: a member of the general public, a party involved, or a reviewing veterinarian who will provide an expert opinion. Request Letter, *supra* note 1, at 2, 4. As noted above, the Board considers the complaint to be an investigation record. The Board must rely on the complaint to provide the necessary information to begin the investigation. Thus, we agree a complaint for which the Board initiated an investigation is an investigation record. The licensee's response obtained as part of the investigation process is also an investigation record. See 22 TEX. ADMIN. CODE § 575.28(6) (2009) (Tex. Bd. of Veterinary Med. Exam'rs, Complaints-Investigations) (requiring investigator to obtain licensee's response during investigation). When requested

³If we determine the complaint is confidential as to the licensee, you ask whether a summary of the complaint is confidential and exempt from disclosure to the licensee. Request Letter, *supra* note 1, at 1. As we have concluded the Board may release the complaint to the licensee in the complaint process without violating section 801.207(b), we need not address this question.

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by a member of the general public, both the complaint and the licensee's response are confidential under section 801.207(b) and, accordingly, excepted from required public disclosure under section 552.101 of the PIA.⁴ TEX. OCC. CODE ANN. § 801.207 (Vernon 2004); TEX. GOV'T CODE ANN. § 552.101 (Vernon 2004). However, in accordance with our construction of section 801.207(b) as imparting confidentiality to investigation records only when requested under the PIA by a member of the general public, the Board may release to the complainant, as a party to the complaint, a copy of the licensee's response during the investigation process.⁵ See *supra* pp.1-4.

We turn to the question of the Board's disclosure of the complaint and licensee's response to a consulting veterinarian. The Board has provided by rule that the investigator may contact a consulting veterinarian during the investigation to assist the Board in performance of its statutory duties. 22 TEX. ADMIN. CODE § 575.28(7) (2009) (Tex. Bd. of Veterinary Exam'rs, Complaints-Investigations). You inform us the Board considers a consulting veterinarian to be an agent of the Board and part of the investigation team.⁶ By obtaining the complaint and licensee response for the purpose of assisting the Board in resolving a complaint, the consulting veterinarian collects the information as the Board's agent. See Tex. Att'y Gen. ORD-437 (1986) at 2-3 (finding independent contractor was agent in collecting information on behalf of governmental body). Information a governmental body's agent collects to carry out a task which otherwise would have been left to the governmental body and was delegated to the agent is information collected or maintained by the governmental body itself for purposes of the PIA. *Id.* at 2-3. Thus, the Board's disclosure of the complaint and licensee's response to a consulting veterinarian, who is assisting the Board in investigating the complaint, is not a disclosure to the public. See TEX. GOV'T ANN. § 552.002(a)(2) (Vernon 2004) (providing information collected "for a governmental body" about official business is governmental body's information subject to PIA), Tex. Att'y Gen. ORD-499 (1988) at 2 (finding information collected and maintained by governmental body's outside consultant to be governmental body's information). Therefore, section 801.207(b) does not prohibit the Board from releasing the complaint and licensee's response to a consulting veterinarian.

⁴This decision is not a "previous determination" under the PIA. Thus, should the Board receive an actual request for information, the Board must seek a ruling from this office. See *id.* § 552.301(a) (requiring governmental body that wishes to withhold requested information to seek attorney general ruling unless the attorney general has issued "previous determination"); see generally Tex. Att'y Gen. ORD-673 (2001) (discussing criteria of "previous determination").

⁵This decision does not address the manner in which information is released by the Board to the parties to the complaint.

⁶Telephone Interview with Dewey E. Helmcamp, III, Executive Director, Texas Board of Veterinary Medical Examiners (Sept. 10, 2009). You also inform us the Board asks consulting veterinarians to sign confidentiality agreements under which they will keep the information confidential, return the records promptly, and use the information only to provide the requested opinion. Request Letter, *supra* note 1, at 2.

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Next, you ask whether the investigation record is "disclosable" at a contested case hearing at the State Office of Administrative Hearings (the "SOAH"). Request Letter, *supra* note 1, at 2, 4. You indicate that the Board may seek to offer into evidence at the SOAH hearing the information it has collected in the investigative file. Request Letter, *supra* note 1, at 3. Only the judge presiding over the hearing is competent to decide whether all or any portion of a particular investigation record is admissible in a SOAH hearing. See TEX. GOV'T CODE ANN. § 2003.042(a)(3) (Vernon 2008) (concerning power of administrative judge to rule on question of evidence); 1 TEX. ADMIN. CODE § 155.153(b)(3) (2009) (State Office of Admin. Hearings, Powers and Duties) (same). This office cannot resolve as a matter of law the question of what information is admissible at the SOAH hearing. See Tex. Att'y Gen Op. Nos. GA-0459 (2006) at 3-4, O-3382 (1941) at 5 (disputed questions of fact, or mixed questions of law and fact cannot be addressed in an attorney general opinion). SOAH proceedings are generally open to the public. 1 TEX. ADMIN. CODE § 155.409 (2009) (State Office of Admin. Hearings, Public Attendance and Comment). As we have determined section 801.207 makes confidential an investigation record as to the public, the preservation of the confidentiality of these records at a SOAH hearing is a matter for the presiding judge to handle in accordance with the law and rules governing such proceedings. TEX. GOV'T CODE ANN. §§ 2001.051-.103 (Vernon 2008) (providing rights and procedures in contested cases), 1 TEX. ADMIN. CODE §§ 155.409 (2009) (State Office of Admin. Hearings, Public Attendance and Comment), .425 (Procedure at Hearing), .429 (Evidence); see 1 TEX. ADMIN. CODE §§ 155.423(f) (2009) (State Office of Admin. Hearings, Making a Record of the Proceeding) (requiring judge to maintain all exhibits admitted during proceeding), .423(g) (permitting judge to order all or part of record sealed in accordance with applicable law).

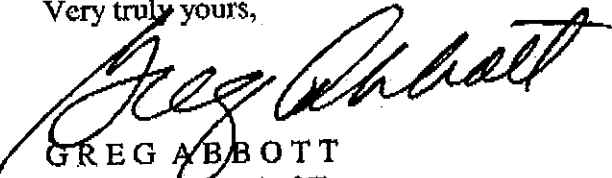
Finally, you ask whether a summary of information found in the investigation file would be confidential under section 801.207 or subject to public disclosure under the PIA if it were included in a Board order. Request Letter, *supra* note 1, at 4. Under the Board's rules, the informal conference is the last stage in the investigation of a complaint. 22 TEX. ADMIN. CODE § 575.29(a) (2009) (Tex. Bd. of Veterinary Med. Exam'rs, Informal Conference). When the Board issues an order, which it does after receiving the administrative judge's findings of fact and conclusions of law, the investigation has concluded. See TEX. OCC. CODE ANN. § 801.456(a) (Vernon 2004) (requiring Board to decide whether violation occurred based on findings of fact, conclusions of law, and proposal for decision); 22 TEX. ADMIN. CODE § 575.30(h) (2009) (Tex. Bd. of Veterinary Med. Exam'rs, Contested Case Hearing at SOAH) (requiring Board to rule on merits of charges and enter order after receiving findings of fact and conclusions of law). Thus, because the investigation has concluded, a Board order is not an investigation record of the Board and, consequently, is not confidential under section 801.207. Whether the information contained in any particular order is subject to required public disclosure under the PIA would depend on the content of the order and, thus, must be determined on a case-by-case basis.

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S U M M A R Y

When requested by a member of the general public, both a complaint about a veterinarian filed with the Texas Board of Veterinary Medical Examiners (the "Board") and the licensee's response to the complaint are confidential under section 801.207(b) of the Occupations Code and therefore excepted from required public disclosure under section 552.101 of the Public Information Act. However, section 801.207(b) does not prohibit the Board from sending a copy of either a complaint to the licensee about whom it concerns or a licensee's response to the complainant during the investigation of the complaint. The Board may also disclose the licensee's response to a consulting veterinarian who is acting on behalf of the Board. The presiding judge must decide whether a particular investigation record is admissible in a SOAH hearing. A Board order is not confidential under section 801.207(b).

Very truly yours,


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