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April 26, 2017

VIA EMAIL ONLY: janetkessler@yandex.com

Janet Kessler
32700 SE Leewood Ln #55C
Boring, OR 97009

Re: Petition for Public Records Disclosure Order
Oregon Veterinary Medical Examining Board
DOJ File No.: 833429-GA0079-17

Dear Ms. Kessler:

This letter is the Attorney General's order responding to your petition for disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on April 10, 2017, asks the Attorney General to order the Veterinary Medical Examining Board to produce "the investigative report and all supporting documents relating to the decision made by the [Board]" in your case.

We respectfully deny your petition as these records are exempt from disclosure under ORS 676.165(5) and ORS 676.175(1) as investigatory information obtained by a health professional regulatory board. You have not shown by clear and convincing evidence that the public interest in disclosure outweighs the interests in nondisclosure.

Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions contained in ORS 192.501 to 192.505. ORS 192.420(1). In addition to the express exemptions contained in those sections, any other information that is confidential, privileged, or prohibited from being disclosed under other Oregon laws is also exempt from disclosure. ORS 192.502(9)(a). Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1). The agency generally carries the burden to sustain any such denial. *Id.*:

Your petition seeks the Board's investigatory file related to your complaint against a licensee. ORS 676.175(1) requires health professional regulatory boards to "keep confidential and not disclose to the public any information obtained . . . as part of an investigation of a licensee or applicant." The Board qualifies as such a regulatory board under ORS 676.160(19). And ORS 676.165(5) exempts from public disclosure any "investigatory information" obtained by an investigator acting for a health professional regulatory board or Health Licensing Office. However, the Board must disclose such investigatory information "if the person requesting the information demonstrates by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure."

Your petition notes that the Board did not interview you and finds fault with the Board's decision not to impose disciplinary action on the licensee; however, you do not present any public interest specific to this case. We interpret your asserted public interest to be a general interest in monitoring a public body's investigation, and note that such an interest is present in every investigation. We have previously held that interests that are present in every disciplinary investigation generally are not sufficient on their own to meet a petitioner's burden because that result would essentially eliminate the legislatively enacted confidentiality provisions. *E.g.*, Public Records Order, Bunnell, Feb 13, 2013.

The competing interests in nondisclosure are the licensee's interest in not having made public allegations that did not result in any discipline; the public interest in encouraging witnesses' full cooperation with the Board; and these witnesses' interests in keeping private the information provided about the licensee.

Because the public interest you asserted is a general one present in every disciplinary investigation, we conclude that you have not demonstrated by clear and convincing evidence that the public interest in disclosure outweighs the described interests in nondisclosure. Because the information you seek is therefore exempt from public disclosure under ORS 676.165(5), and must be kept confidential under ORS 676.175(1), it is exempt under ORS 192.502(9)(a). We must therefore respectfully deny your petition.

Sincerely,

Frederick M. Boss
Deputy Attorney General

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