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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

April 12, 1991

Mr. Donald G. Vandiver
First Assistant City Attorney
City of Lubbock
P. O. Box 2000
Lubbock, Texas 79457

OR91-184

Dear Mr. Vandiver:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11612.

The city of Lubbock has received a request to examine "records of rabies vaccinations which have been submitted . . . in the form of city rabies licenses issued by veterinarians within the city of Lubbock." You seek to withhold the information under sections 3(a)(1), 3(a)(4), and 3(a)(10) of the Open Records Act.

The type of information sought is submitted to the city of Lubbock pursuant to a city rabies control ordinance. Chapter 826 of the Health and Safety Code authorizes cities to enact rabies control measures. A city may not register or license an animal that has not been vaccinated for rabies. Health and Safety Code § 826.021(c). Attorney General Opinion JM-656 (1987) concluded that a city requirement that information regarding vaccination be submitted to the city prevails over the rule adopted by the Board of Veterinary Medical Examiners that a licensed veterinarian "shall not violate the confidential relationship between self and client." 22 T.A.C. § 573.27. You suggest, however, that the rule of the Board of Veterinary Medical Examiners prohibits the city from releasing the information to the public. We disagree.

Section 3(a)(1) of the Open Records Act incorporates statutory confidentiality provisions such as section 5.08(b) of the Medical Practice Act, article 4495b, V.T.C.S., which makes records created or maintained by physicians confidential. The confidentiality provision in question here, however, was adopted by rule. In Industrial Found. of the South v. Texas Indus. Accident Bd, 540 S.W. 2d 668 (Tex. 1976) *cert denied*, 430 U.S. 931 (1977) the court wrote, "While a rule may

have the force and effect of a statute in other contexts, we do not believe that a governmental agency may bring its information within exception 3(a)(1) by the promulgation of a rule." *Id.* at 677. It follows that a governmental body may not bring information that is in the hands of another governmental body within exception 3(a)(1) by the promulgation of a rule. Therefore, the city may not withhold the requested information under section 3(a)(1).

You also raise section 3(a)(4), which applies to "information which, if released, would give advantage to competitors or bidders." Section 3(a)(4) is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. The test for determining whether section 3(a)(4) applies is whether there has been a showing of some specific actual or potential harm to a governmental body's position in a particular competitive situation. Open Records Decisions Nos. 568, 541 (1990). Because no such showing has been made in this instance, the city may not withhold the records under section 3(a)(4).

Finally, you state that releasing the records would be tantamount to releasing client lists of individual veterinarians. You then argue that such lists are trade secrets and within the section 3(a)(10) exception. Customer lists may be trade secrets, but they are not always trade secrets as a matter of law. Open Records Decision No. 552 (1990). Neither the city nor the private parties that submitted a brief on this matter made any showing that any particular customer list was a trade secret. Therefore, the city may not withhold the records under section 3(a)(10).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-184.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/lb

Ref.: ID# 11612

Enclosure: Open Records Decision No. 552

cc: William R. Moss
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