



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2010

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2010-14062

Dear Ms. DeLuca:

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# 393645.

The City of Bryan (the "city") received a request for: 1) all information kept by the city required by the enforcement of "Part II, Chapter 10, Animals, Sec. 10-4.-Records" of the city's code of ordinances; and 2) statements of the number of dogs, cats, and miscellaneous animals received by Brazos Animal Shelter (the "shelter") from the city and the number of days held during the preceding calendar year, from 2007 through the first quarter of 2010, per the city's contract with the shelter. You state the city has released some information to the requestor. You represent to this office that the city has no information responsive to item one of the request.¹ You claim portions of the submitted records are excepted from disclosure under section 552.101 of the Government Code. We have considered the

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.-San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

exception you claim and reviewed the submitted representative sample of information.² We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 protected by other statutes, such as section 826.0211 of the Health and Safety Code, which provides in part:

(a) Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under [the Act]. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

Health & Safety Code § 826.0211(a). We note that section 826.0211 is applicable only to information contained in a rabies vaccination certificate or in a record compiled from information contained in one or more rabies vaccination certificates. You seek to withhold the identifying information of owners of animals within the submitted records. The submitted records, however, are not rabies vaccination certificates, and you do not inform us that the information at issue was compiled from information contained in a rabies vaccination certificate. Thus, we find you have failed to establish that the submitted records are confidential under section 826.0211 of the Health and Safety Code. Therefore, the city may not withhold these records under section 552.101 of the Government Code on that basis. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection); *see also* Open Records Decision Nos. 658 at 4, 478 at 2 (1987). As you raise no further exceptions to disclosure, the submitted records 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,

²We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/em

Ref: ID# 393645

Enc. Submitted documents

c: Requestor
(w/o enclosures)