



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 16, 2011

Ms. Monica Hernandez  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2011-08579

Dear Ms. Hernandez:

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# 420830 (COSA File No. W000339-032911).

The City of San Antonio (the "city") received a request for all records for every cat or kitten killed by Animal Control Services on a specified day and all records that were forwarded for rabies testing during a specified time frame. You state the city will release some of the requested information to the requestor. You claim that 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 representative sample of information.<sup>1</sup>

Initially, we note the request, in part, seeks information created after the date the request was received. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1

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<sup>1</sup>We assume that the representative samples of records submitted to this office are 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.

(1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consists of documents the city maintained or had a right of access to as of the date that it received this request.

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. You contend the submitted information is confidential under section 801.359 of the Occupations Code, which provides as follows:

- (a) The [State Board of Veterinary Medical Examiners (the "board")] shall require each veterinarian to maintain a recordkeeping system for controlled substances as required by Chapter 481, Health and Safety Code.
- (b) The records are subject to review by a law enforcement agency or board representative.

Occ. Code § 801.359. You state the submitted information is contained in a log book in which veterinarians maintain an inventory of controlled substances used in dealing with animals owned by the city's Animal Care Services Department. You contend section 801.359 "limits access to the log book to [a] law enforcement agency or a board representative." You argue the submitted information should be withheld pursuant to section 801.359 because the requestor is not a representative of either a law enforcement agency or the board. Having considered your arguments, we find section 801.359 neither expressly makes any information confidential nor prohibits public disclosure of any information for purposes of section 552.101 of the Government Code. *See* Open Records Decision No. 478 at 2 (1987) (confidentiality under statutory predecessor to Gov't Code § 552.101 required express language making certain information confidential or stating information shall not be released to public); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). We therefore conclude the city may not withhold the submitted information under section 552.101 of the Government Code on the basis of section 801.359 of the Occupations Code.

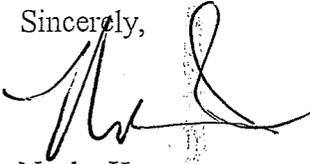
You also raise section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common law privacy, both elements of this test must be established. *Id.* at 681-82. Common-law privacy

encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). You have not demonstrated, nor do we find, that any of the information at issue is highly intimate or embarrassing and not a matter of legitimate public interest. We therefore conclude the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As you have submitted no other arguments against disclosure, the city must release the submitted information.

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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 420830

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)