



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2012

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2012-14373

Dear Ms. Nicholson:

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# 464973.

The Austin Animal Center (the "center") received a request for (1) a list of all the individuals who adopted animals from the center and its predecessor site, including the name, physical address, e-mail address, and type of animal adopted, in the three years preceding the request; and (2) the total number of animals adopted each year by type. You state some of the requested information will be released. You claim 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.¹

Initially, we note the requestor is only seeking certain information pertaining to individuals who have adopted animals and the total number of animals adopted in each of the past three years. The submitted information contains information beyond these specific pieces of information. Thus, the portions of the submitted information that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the center is not required to release non-responsive information in response to this request.

Next, we must address the center's obligations under section 552.301 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body

¹We 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 those records contain substantially different types of information than that submitted to this office.

that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). You state the center received the request for information on June 15, 2012. Accordingly, you were required to provide the information required by section 552.301(b) by June 29, 2012. A copy of the envelope in which the center originally submitted the information required by section 552.301(b) bears a postmark of June 29, 2012. The submitted information reflects, however, that the original submission was returned to the center for insufficient postage and the center again mailed the required information to this office in an envelope bearing a postmark of July 6, 2012. Section 552.308 of the Government Code provides when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail "with postage . . . prepaid" and the postmark date is within the required time period. *See id.* § 552.308. Because the center did not submit the information required by section 552.301(b) within the required time period, we find the center failed to comply with the requirements of section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the center's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your argument under that exception.

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. Section 552.101 encompasses section 826.0311 of the Health and Safety Code, which states in relevant part:

(a) Information that is contained in a municipal or county registry of dogs and cats under Section 826.031 that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the registered dog or cat is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the registry may not include the social security number or the driver's license number of the owner of the registered animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

Health & Safety Code § 826.0311(a), (b). Section 826.0311 applies only to the actual pet registry; it does not apply to the contents of other records, even though those documents may contain the same information as the pet registry. *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 (1998), 478 at 2 (1987). You state the submitted information is a sample of the City of Austin's pet registry. It does not appear that the exceptions found in section 826.0311(b) of the Health and Safety Code apply in this instance. Based on your representations and our review, we agree the center must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 826.0311(a) of the Health and Safety Code. The remaining responsive information is not subject to section 826.0311(a) of the Health and Safety Code and 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, 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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 464973

Enc. Submitted documents

c: Requestor
(w/o enclosures)