



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2012

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

OR2012-15319

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# 468929 (COSA File No. W009268).

The City of San Antonio (the "city") received a request for specified information related to unhealthy and untreatable animals taken by the city's Animal Care Services Department (the "department") during June of 2012. You state the city will release some of the requested information but 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 We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you acknowledge, and we agree, you failed to comply with the procedural requirements of section 552.301 of the Government Code. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (Tex.

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.

App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.101 can provide a compelling reason to overcome this presumption. Therefore, we will address your arguments under this 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. This section encompasses information protected by other statutes. You contend some of 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 information at issue is contained in a log book in which veterinarians maintain an inventory of controlled substances used in dealing with animals owned by the department. You contend section 801.359 “limits access to the log book to [a] law enforcement agency or a board representative.” You argue the information at issue 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). Therefore, the city may not withhold any of the information at issue under section 552.101 of the Government Code on the basis of section 801.359 of the Occupations Code.

You claim some of the submitted information is confidential under section 801.353 of the Occupations Code. This section provides in part the following:

- (a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian’s client.
- (b) A veterinarian may not be required to release information concerning the veterinarian’s care of an animal, except on the veterinarian’s receipt of:

- (1) a written authorization or other form of waiver executed by the client; or
- (2) an appropriate court order or subpoena.

Occ. Code § 801.353(a), (b). Section 801.353 limits a veterinarian's release of information concerning the veterinarian's care of an animal to certain circumstances. *See id.* You indicate the information at issue consists of veterinary records created by city veterinary staff for animals that the department took from the community. You state the department "is both owner and caretaker of the animals it takes from the community until it finds an adopter for each animal." You inform us some of the animals whose records are at issue have been adopted by members of the public, and the city has not obtained permission from those owners to release their animals' records. *See id.* § 801.351(a)(1) (defining "client" as "owner or other caretaker of the animal"). You also represent the remaining records pertain to animals that are owned by the city, and the city does not consent to the release of these records. *See id.* Finally, you state the requestor has not produced an appropriate court order or subpoena to release the information at issue. Based on your arguments and our review, we conclude this information consists of veterinary records that are subject to the chapter 801 of the Occupations Code. Accordingly, the city may only release the information you have marked under section 801.353 of the Occupations Code in accordance with that section. However, the city must release the remaining information to the requestor.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 468929

Enc. Submitted documents

c: Requestor
(w/o enclosures)