



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2012

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Assistant City Attorney
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Ms. Camila Kunau
Assistant City Attorney
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OR2012-15922

Dear Ms. Hernandez and Ms. Camila Kunau:

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# 467760 (COSA File No. W009050).

The City of San Antonio (the "city") received a request for records that document animals entering the city's Animal Care Services Department ("ACS") that were assessed by a licensed veterinarian for injuries during a specified time period. 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.¹ We have also received and considered comments

¹We assume the "representative sample" of information 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 those submitted to this office.

from the requestor. *See* Gov't Code § 552.304 (providing that 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." *Id.* § 552.101. This exception encompasses information other statutes make confidential. You contend the information you have marked 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 you have marked 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 ACS. You contend section 801.359 "limits access to the log book to [a] law enforcement agency or a board representative." You argue the 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 information you have marked under section 552.101 of the Government Code on the basis of section 801.359 of the Occupations Code.

The city claims the information it has marked 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.* The city indicates the information it has marked consists of veterinary records created by city veterinary staff. The city informs us some of the animals whose records are at issue are privately owned and were brought to the ACS for treatment by the owner, 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"). The city also represents the remaining records pertain to animals that are owned by the city. The city informs us it does not consent to the release of these records. *See id.* Finally, the city states the requestor has not produced an appropriate court order or subpoena to release the information at issue. Based on these arguments and our review, we conclude the information the city has marked consists of veterinary records that are subject to the chapter 801 of the Occupations Code. Accordingly, the city may only release the information it has marked in accordance with section 801.353 of the Occupations Code.²

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 remaining information is highly intimate or embarrassing and not a matter of legitimate public interest. We therefore conclude the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city may only release the veterinary records it has marked in accordance with section 801.353 of the Occupations Code. The city must release the remaining information.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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, 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 467760

Enc. Submitted documents

c: Requestor
(w/o enclosures)