



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2012

Ms. Camila Kunau
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-15769

Dear Ms. 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# 466835 (COSA File Nos. W008947, W009027, and W009143).

The City of San Antonio (the "city") received three requests from two requestors for (1) six categories of information pertaining to the transfer of animals from the city's Animal Care Services Department ("ACS") to San Antonio Pets Alive! ("SAPA") and four categories of information regarding the tracking, inventory, distribution, or administration of controlled substances or antibiotics; (2) all records regarding animals transferred from ACS to SAPA; and (3) all records regarding SAPA. You state the city will release some of the requested information. You also state the city has no information responsive to a portion of the request.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you have notified SAPA of the request pursuant to section 552.304 of the Government Code. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

representative sample of information.² We have also considered comments submitted by SAPA and one of the requestors. *See id.*

Initially, you claim, and SAPA submits comments arguing, the city does not have a right of access to some of the requested information.³ We thus understand the city and SAPA to argue a portion of the requested information is not “public information” subject to the Act. Section 552.002 of the Act provides “public information” subject to the Act consists of information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all information that is in a governmental body’s physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov’t Code § 552.001(a). The city claims it does not have a right of access, pursuant to its contract with SAPA, to the information it marked, and that this information is created and maintained by SAPA representatives.⁴ Based on these representations and our review, we find the information the city has marked is not information maintained in connection with the transaction of official business of the city. *See* Gov’t Code § 552.021. Therefore, the information the city has marked is not subject to the Act and need not be released in response to these requests. The city indicates the remaining information it submitted is maintained by the city for the transaction of official city business. We find the remaining information is subject to the Act and we will address the city’s arguments against disclosure.

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

³Although SAPA has submitted information with its comments, we note this ruling will only address the information the city submitted to this office. *See* Gov’t Code § 552.301(e)(1)(D).

⁴We note this information was forwarded to the city by SAPA after the city received the present request for information.

We next note some of the remaining information, which we have marked, is not responsive to the request because it was created after the date the requests were received. This decision does not address the public availability of the non-responsive information and that information need not be released in response to the present 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” and encompasses information that other statutes make confidential. Gov’t Code § 552.101. The city contends the information it has 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. The city states the information it has marked is contained in a log book in which veterinarians maintain an inventory of controlled substances used in dealing with animals owned by ACS. The city contends section 801.359 “limits access to the log book to [a] law enforcement agency or a board representative.” The city argues the information it has marked should be withheld pursuant to section 801.359 because this section limits access to the log book to 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 the information it has 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 of the city. The city states it has not obtained permission from the owners or caretakers of the animals whose records are at issue to release their animals' records. *See id.* § 801.351(a)(1) (defining "client" as "owner or other caretaker of the animal"). Further, 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 we have marked consists of veterinary record information that is subject to chapter 801 of the Occupations Code. Accordingly, the city may only release the information we have marked in accordance with section 801.353 of the Occupations Code.⁵ However, the city has failed to demonstrate the remaining responsive information consists of veterinary records that are subject to chapter 801 of the Occupations Code. Thus, the city may not withhold the remaining information it has marked under section 552.101 of the Government Code in conjunction with section 801.353.

Section 552.101 of the Government Code also 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.

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Id. § 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. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). You state the information you seek to withhold consists of “printouts from the city’s dog and cat registry.” You further state none of the exceptions in section 826.0311(b) apply in this instance. Therefore, we conclude the information we have marked identifies or tends to identify the owner of registered dogs, and is therefore subject to section 826.0311. Thus, you must withhold the information we have marked under section 552.101 in conjunction with section 826.0311(a) of the Health and Safety Code. However, we find none of the remaining responsive information consists of the address, telephone number, or other personally identifying information of a pet owner. Thus, no portion of the remaining responsive information may be withheld under section 552.101 in conjunction with section 826.0311 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find the city has failed to demonstrate the remaining responsive information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any of the remaining responsive information under section 552.101 in conjunction with common-law privacy.

We note some of the remaining responsive information is subject to section 552.137 of the Government Code, which excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).⁶ Gov’t Code § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold this e-mail address under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release under section 552.137(b).

In summary, the information the city has marked is not subject to the Act and need not be released in response to these requests. The city may only release the veterinary records we

⁶The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

have marked in accordance with section 801.353 of the Occupations Code. The city 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 city must also withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release under section 552.137(b) of the Government Code. The city must release the remaining responsive 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 466835

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)

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