



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2013

Ms. Danielle R. Folsom
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2013-09174

Dear Ms. Folsom:

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# 489035 (GC No. 20383).

The City of Houston (the "city") received a request for the incident report concerning a specified incident. You inform us the city will release some of the requested information. You claim some of 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 information.

Initially, we note, and you acknowledge, the city did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *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 may exist to withhold information when the information is made confidential by another source of law or affects third

party interests. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this section to the submitted information.

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 information protected by other statutes, such as 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).

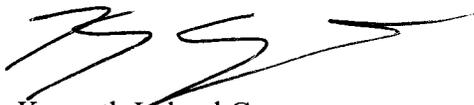
You inform us the information you have marked consists of the personally identifying information of the owner of a registered animal. You also inform us the information at issue is kept by the city’s Bureau of Animal Regulation and Care (“BARC”). You explain BARC maintains the city’s pet registry through a computer database using the Chameleon software and this information was pulled from the Chameleon database. However, you do not inform us whether the Chameleon software is also used to maintain other types of information in addition to the city’s pet registry. Further, you do not state, and we are not able to determine, whether the information at issue was obtained directly from the city’s pet registry. Accordingly, we must rule conditionally. It does not appear the exceptions found in

section 826.0311(b) of the Health and Safety Code apply in this instance. Thus, to the extent the information you have marked was obtained directly from the city's pet registry, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with section 826.0311(a) of the Health and Safety Code. However, to the extent the marked information was not obtained directly from the city's pet registry, this information is not confidential under section 826.0311(a) and the city may not withhold it under section 552.101 on that basis.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 489035

Enc. Submitted documents

c: Requestor
(w/o enclosures)