



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2017

Ms. Nneka E. Kanu
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2017-09482

Dear Ms. Kanu:

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# 656227 (GC No. 24104).

The City of Houston (the "city") received a request for (1) all documents referencing citizen complaints concerning dog bites or dangerous or aggressive behavior by dogs, during a specified time period, and (2) reports showing the number of intakes by the city's Bureau of Animal Regulation and Care ("BARC") during a specified time period. The city states it will release some information. The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed 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." *See id.* § 552.101. Section 552.101 encompasses information made confidential 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).

The city states the submitted information contains personally identifying information of the owners of registered animals. The city informs us the submitted information is maintained in a computer database registry used by BARC. The city explains BARC maintains the registry through a computer database using the Chameleon software, and the city states the information at issue was pulled directly from the pet registry through the Chameleon database. The exceptions found in section 826.0311(b) of the Health and Safety Code do not appear to apply. Thus, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 826.0311(a) of the Health and Safety Code. However, we find the city has failed to demonstrate the remaining information at issue identifies or tends to identify the owner of a registered dog or cat. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with section 826.0311(a) 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 is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet.

denied) (mem. op.). Upon review, portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.¹ *See* Gov't Code § 552.130. Upon review, the city must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code.

In summary, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 826.0311(a) of the Health and Safety Code. The city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code. The city must release the remaining 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

