



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2017

Ms. Elizabeth Reynolds
Paralegal
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2017-19688

Dear Ms. Reynolds:

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# 673104 (C004363-061217 and C004364-061217).

The City of Dallas (the "city") received two requests from different requestors for information pertaining to incidents at a specified address during a specified time period involving a dangerous dog investigation, a named canine, or a named individual, including information pertaining to a specified incident.¹ You state the city will release some of the

¹We note the city asked for and received clarification regarding one of the requests. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the

requested information. We understand the city has redacted personal e-mail addresses under section 552.137 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).² You claim some of the remaining requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.³

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 of the Government Code encompasses section 801.353 of the Occupations Code, which provides, in part, the following:

(a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian’s client.

...

(f) A veterinarian does not violate this section by providing the name or address of a client, or the rabies vaccination status of a specific client’s specific animal, to a public health authority, veterinarian, physician, or other licensed health care professional who requests the identity of the client to obtain information for:

- (1) the verification of a rabies vaccination;
- (2) other treatment involving a life-threatening situation; or
- (3) a public health purpose.

(g) A public health authority that receives information under [s]ubsection (f) shall maintain the confidentiality of the information, may not disclose the information under [the Act] and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

³We 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 that those records contain substantially different types of information than that submitted to this office.

Occ. Code § 801.353(a), (f)-(g). Subsection 801.353(g) prohibits the public disclosure of information obtained by a public health authority from a veterinarian pursuant to subsection 801.353(f) for the reasons enumerated in subsection 801.353(f). Section 801.353 limits a veterinarian's release of information concerning the veterinarian's care of an animal to certain circumstances. *See id.* You assert a portion of the submitted information consists of veterinary records confidential under section 801.353. However, the city does not inform us these records were provided to city by the veterinarians at issue pursuant to section 801.353(f). *See id.* § 801.353(f)-(g). Therefore, we conclude the city has not established this information is confidential under section 801.353, and may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also 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)*.

The city states the information it marked within the submitted documents consists of personally identifying information of the owner of a registered animal. The city states the information at issue "consists of a portion of the city's pet registry." It does not appear the exceptions found in section 826.0311(b) of the Health and Safety Code apply in this instance.

Based on the city's representation that the information at issue 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.

We next address your argument under section 552.103 of the Government Code, as is potentially the most encompassing. Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You seek to withhold the information you have marked under section 552.103 of the Government Code. You state the city is party to a lawsuit styled *Roger A. Farahmand v. City of Dallas*, No. A17000008, that is currently pending in city's municipal court. However, we note the submitted documentation reveals the lawsuit was filed after the date the city received the present requests for information. Therefore, we find litigation was not pending on the date the city received these requests. Accordingly, we find you have failed to demonstrate the city was involved in pending litigation relating to the information at issue at the time it received the present requests for information. Accordingly, the city may not withhold the information at issue under section 552.103 of the Government Code.

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279 at 1-2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988)*. However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. *Open Records Decision No. 549 at 5 (1990)*.

You state the information you have marked reveals the identity of a complainant who reported a possible violation of section 7-3.1 of the city's code to the city's 3-1-1 call center. You state the complaint was referred to the city's Animal Control Services Department, which you explain has the authority to enforce the provision of the code at issue. You also state that the alleged violation is punishable by fines. Based upon these representations and our review, we conclude the city has demonstrated the applicability of the common-law informer's privilege to the information you marked. Accordingly, the city may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.


In summary, 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. The city may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining information must be released.

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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/sb

Ref: ID# 673104

c: 2 Requestors