



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 30, 2018

Ms. Amy L. Sims
Deputy City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2018-02000

Dear Ms. Sims:

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# 693292 (File No. 1762).

The City of Lubbock (the “city”) received a request for specified information pertaining to the city animal shelter during a specified time period.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹We note the city sought and received clarification of the information requested. *See* Gov’t Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

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

Code § 552.101. Section 552.101 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 [the Act]. 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 [the Act], 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. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). Upon review, we find you have failed to demonstrate any portion of the information you marked consists of the city's actual pet registry. Accordingly, the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 826.0311 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 826.0211 of the Health and Safety Code, which provides:

(a) Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under [the Act]. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

Health & Safety Code § 826.0211(a). Section 826.0211 applies only to information contained in a rabies vaccination certificate or in a record compiled from information

contained in one or more rabies vaccination certificates. Upon review, you have failed to demonstrate the information you marked consists of information contained in one or more vaccination certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal. Accordingly, the city may not withhold this information under section 552.101 of the Government Code in conjunction with section 826.0211 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. 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.). Accordingly, the city must withhold the public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the city has failed to demonstrate the remaining information it marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. Gov't Code § 552.130(a)(1), (2). Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.³ However, you have failed to demonstrate any of the remaining information you marked is subject to section 552.130. Thus, the city may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, in part, the following:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Id. § 552.136(a)-(b). Upon review, we find you have not explained how the microchip pet registration numbers you marked consist of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Thus, you have failed to establish this information is confidential under section 552.136, and the city may not withhold it on that basis.

Section 552.137 of the Government Code 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). *See id.* § 552.137(a)-(c). You state the owner of the e-mail address has not consented to its release. Accordingly, the city must withhold the personal e-mail address we marked under section 552.137. *See id.* § 552.137(b). However, we find you have failed to demonstrate any of the remaining information you marked consist of e-mails excepted under section 552.137. Accordingly, the city may not withhold any of the remaining information you marked under section 552.137 of the Government Code.

In summary, the city must withhold the public citizen’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must withhold the personal e-mail address we marked under section 552.137 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,

A handwritten signature in black ink, appearing to read "Ashley Crutchfield". The signature is written in a cursive, flowing style.

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/sb

Ref: ID# 693292

Enc. Submitted documents

c: Requestor
(w/o enclosures)