



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 7, 2020

Mr. Jeff Ulmann  
Counsel for the City of Ranger  
The Knight Law Firm  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2020-00627

Dear Mr. Ulmann:

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# 805012 (PIR# 10-8-19).

The City of Ranger (the "city"), which you represent, received a request for three categories of information pertaining to the city's animal control. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state, and provide documentation showing, the city notified the Drug Enforcement Agency of the request for information and of its right to submitted arguments to this office as to why the submitted information should not be released.<sup>1</sup> *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the exception you claim 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" and encompasses information that other statutes make confidential. *Id.* § 552.101. The city contends some of the information at issue is confidential under section 801.359 of the Occupations Code, which provides as follows:

---

<sup>1</sup> As of the date of this letter, we have not received comments from the Drug Enforcement Agency.

(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 some of the submitted information is contained in a euthanasia log book. 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 at issue should be withheld pursuant to section 801.359 because the requestor is not a representative of either a law enforcement agency or the board. Having considered the city’s 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 any of the submitted information under section 552.101 of the Government Code on the basis of section 801.359 of the Occupations Code.

Section 552.101 of the Government Code 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.

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* ORD 658 at 4. Upon review, we find the city has failed to establish the information at issue is contained in a municipal or county registry of dogs and cats and identifies or tends to identify the owner of a registered dog or cat. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code 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. Upon review, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern. Therefore, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the submitted information, we find you have failed to demonstrate how any portion of the information at issue falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the city may not withhold any of the requested information under section 552.101 on the basis of constitutional privacy. Accordingly, the city must release the submitted 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open

Mr. Jeff Ulmann - Page 4

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/mo

Ref: ID# 805012

Enc. Submitted documents

c: Requestor  
(w/o enclosures)