



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 16, 2020

Mr. Matthew Murray
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2020-08162

Dear Mr. Murray:

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# 817331 (ORR# W095502).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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." Gov't Code § 552.101. Section 552.101 encompasses section 826.0311 of the Health and Safety Code, which states, in relevant part, the following:

- (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]. . . .
- (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 information in 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).

The city states the information it has marked is maintained by the city as part of its pet registry. The city also states it “maintains licensing and investigation records in one database, a software program called PetPoint.” The city further asserts it “does not have the ability to access the requested records within the database without also pulling up registry information.” We note the information that the city has marked is contained in an investigation report. The city does 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. The exceptions found in section 826.0311(b) of the Health and Safety Code do not appear to apply. Thus, if the information at issue was obtained directly from the city’s pet registry, then the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 826.0311(a) of the Health and Safety Code. However, if the information was not obtained directly from the city’s pet registry, then the information is not confidential under section 826.0311(a), and the city may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third 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.). The city must withhold the submitted date of birth under section 552.101 of the Government Code in conjunction with common-law privacy, to the extent it is not confidential under section 826.0311(a) of the Health and Safety Code.

In summary, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 826.0311(a) of the Health and Safety Code if this information was obtained directly from the city’s pet registry. Regardless, the city must withhold the submitted date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 817331

Enc. Submitted documents

c: Requestor
(w/o enclosures)