



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2022

Ms. Avis D. White
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2022-20798

Dear Ms. White:

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# 960237 (ORR W038603).

The City of Killeen (the "city") received a request for information pertaining to animals confiscated during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1177 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. This exception encompasses information protected by section 801.353 of the Occupations Code, which provides, in relevant part, the following:

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

(b) A veterinarian may not be required to release information concerning the veterinarian's care of an animal, except on the veterinarian's receipt of:

(1) a written authorization or other form of waiver executed by the client; or

(2) an appropriate court order or subpoena.

Occ. Code § 801.353(a), (b). Section 801.353 limits a veterinarian's release of information concerning the veterinarian's care of an animal to certain circumstances. *See id.* The city argues the submitted information consists of veterinary records of a veterinarian employed by the city. The city informs us it has not obtained permission from the owner or caretaker

of the animal whose records are at issue to release the animal's records. *See id.* § 801.351(a)(1) (defining "client" as "owner or other caretaker of the animal"). Further, the city states the requestor has not produced an appropriate court order or subpoena to release the information at issue. Based on these arguments and our review, we conclude some of the submitted information, which we marked, consists of veterinary record information that is subject to chapter 801 of the Occupations Code. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations Code. However, we find the city has not demonstrated any of the remaining information is confidential under section 801.353 of the Occupations Code, and the city may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), which governs access to medical records. Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find none of the remaining information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with the MPA.

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). Upon review, the city has failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city

may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.1177(a) of the Government Code relates to the humane disposition by a municipality or county of an animal and provides the following:

Except as provided by Subsection (b), information is confidential and excepted from [required public disclosure] if the information relates to the name, address, telephone number, e-mail address, driver's license number, social security number, or other personally identifying information of a person who obtains ownership or control of an animal from a municipality or county making a humane disposition of the animal under a municipal ordinance or an order of the commissioners court.

Gov't Code § 552.1177(a). The city asserts the remaining information identifies people who adopted animals from the city's municipal animal shelter. Upon review, we find the city has failed to establish section 552.1177 is applicable to the remaining information. Therefore, the city may not withhold any of the remaining information on that ground.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations 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 <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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/mo

Ref: ID# 960237

Enc. Submitted documents

c: Requestor
(w/o enclosures)