



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2022

Ms. Sidney Smith
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2022-34954

Dear Ms. Smith:

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# 983075 (COSA File No. W465517-081222).

The City of San Antonio (the "city") received a request for certain reports during a stated period of time.¹ You state the city will release some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1177 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 Code § 552.101. This exception encompasses information protected by section 801.353 of the Occupations Code, which provides, in relevant part, the following:

¹ The city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

² We 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.

(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.* Attachment III-A 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 the information at issue consists of veterinary record information that is subject to chapter 801 of the Occupations Code. Accordingly, the city must withhold Attachment III-A under section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 826.0211(a) of the Health and Safety Code, which reads as follows:

(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 is applicable 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, we find section 826.0211 is applicable to some of the information in Attachment III-B. Therefore, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 826.0211(a) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information made confidential by statute, such as the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(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.

Occ. Code § 159.002(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* § 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Section 159.001 of the MPA defines "patient" as a person who consults with or is seen by a physician to receive medical care. Occ. Code § 159.001(3). Upon review, we find some of the remaining information, which we marked, constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by someone under the supervision of a physician. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information constitutes medical records subject to section 159.002. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note the city's Animal Care Services Department ("ACS") is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 61.103 (listing agencies that may conduct child abuse investigations). The city asserts Attachments III-C and III-D are subject to chapter 261 of the Family Code. Upon review, however, we find the city has not demonstrated any portion of the information at issue was used or developed in an investigation of alleged or suspected child abuse or

neglect under section 261.201(a)(2). Furthermore, the city has not established the information at issue consists of a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Therefore, the city may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You have not explained the information at issue pertains to any specific investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, you have failed to demonstrate the applicability of section 552.108(a)(2). Therefore, the city may not withhold any portion of the remaining information under section 552.108 of the Government 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. 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, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information you marked in Attachment III-C, the entirety of Attachment III-D, and the additional information we marked 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 at issue is highly intimate or embarrassing information of a living individual and of no legitimate public concern. Therefore, the city may not withhold the remaining information under section 552.101 of the Government Code 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). You assert some of the remaining information identifies individuals who adopted an animal from the city's animal shelter (the "shelter"). You state the shelter made a humane disposition of the animals at issue under a municipal ordinance. Upon review, we find the city must withhold the information you marked under section 552.1177 of the Government Code.

In summary, the city must withhold Attachment III-A under section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 826.0211(a) of the Health and Safety Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. The city must withhold the information you marked in Attachment III-C, the entirety of Attachment III-D, and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you marked under section 552.1177 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 <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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/mo

Ref: ID# 983075

Enc. Submitted documents

c: Requestor
(w/o enclosures)