



May 16, 2002

Ms. Sara Hartin  
Assistant City Attorney  
City of Killeen  
101 North College  
Killeen, Texas 76541

OR2002-2619

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162950.

The City of Killeen's Animal Control Department (the "department") received a request for information pertaining to a dog bite that occurred at 531 South 56<sup>th</sup> Street in Killeen, Texas on January 2, 2002. You state that you have released some responsive information to the requestor. However, you claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the requested information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the requested information is contained in a completed report. Thus, this information must be released under section 552.022(a)(1)

unless it is expressly confidential under other law or excepted from disclosure under section 552.108.

You claim that the highlighted portions of the Animal Bite Report are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with sections 826.0211 and 826.0311 of the Health and Safety Code.<sup>1</sup> Section 826.0211 provides in pertinent part that “[i]nformation that is contained in a rabies vaccination certificate that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code.” Health & Safety Code § 826.0211(a). Likewise, section 826.0311 provides in pertinent part that “[i]nformation 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.” Health & Safety Code § 826.0311(a).

You contend that these two statutory provisions apply to the highlighted portions of the Animal Bite Report because these portions are identical to the information that is contained in the City of Killeen’s registry of animals and rabies vaccination certificate. We note, however, that the Animal Bite Report is not itself a rabies vaccination certificate or a registry of dogs and cats. Thus, we do not agree that either section 826.0211 or section 826.0311 of the Health and Safety Code applies to any portion of the Animal Bite Report. Accordingly, we conclude that the highlighted portions of the Animal Bite Report are not made confidential under sections 826.0211 or 826.0311 of the Health and Safety Code and, thus, are not excepted from disclosure pursuant to section 552.101 of the Government Code. *See also* Open Records Decision Nos. 649 at 3 (1996) (language of a confidentiality provision controls the scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public).

You also claim that the highlighted telephone number on the Animal Bite Report is excepted from disclosure pursuant to section 552.101 in conjunction with section 826.041 of the Health and Safety Code. Section 826.041 provides in pertinent part:

- (a) A person who knows of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid, shall report the incident or animal to the local rabies control authority of the county or municipality in which the person lives, in which the animal is located, or in which the exposure occurs.

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<sup>1</sup> Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information protected by other statutes.

(b) The report must include:

- (1) the name and address of the victim and of the animal's owner, if known; and
- (2) any other information that may help in locating the victim or animal.

(c) The local rabies control authority shall investigate a report filed under this section.

Health & Safety Code § 826.041. You contend that this number is confidential under section 826.041 because that section does not require the report to include the telephone number of the animal's owner. We disagree. Section 826.041 is not a confidentiality provision. Therefore, the department may not withhold the highlighted telephone number on the Animal Bite Report from disclosure under section 552.101 in conjunction with section 826.041 of the Health and Safety Code. *See* Open Records Decision No. 465 (1987) (confidentiality requirement will not be inferred from statutory structure.) *See also* Open Records Decision No. 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information).

You also contend that because the highlighted telephone number is not listed in the current local telephone directory the number is private and should not be released. Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 455 (1987), this office determined that home addresses and telephone numbers ordinarily do not qualify as the kind of "intimate aspects of human affairs" that are private. Furthermore, disclosure of an individual's home telephone number is not an invasion of privacy. *See* Open Records Decision No. 554 (1990). We also note that information is not confidential under the Public Information Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Industrial Foundation v. Texas Indus. Accident Board*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). Additionally, information is not excepted from disclosure merely because it is furnished with the expectation that access to it will be restricted. *See* Open Records Decision No. 180 (1977). Accordingly, the department may not withhold the highlighted telephone number on the Animal Bite Report from disclosure under section 552.101 in conjunction with common law privacy.

You claim that the highlighted driver's license number is excepted from disclosure under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

You must withhold the highlighted Texas driver's license number, which we have marked, under section 552.130.

In summary, the department must withhold the highlighted Texas driver's license number, which we have marked, under section 552.130. The department must release the remainder of the Animal Bite Report to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

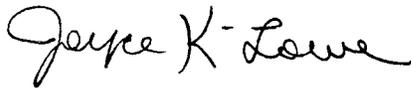
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe  
Assistant Attorney General  
Open Records Division

JKL/sdk

Ref: ID# 162950

Enc: Submitted documents

c: Mr. Steven N. Walden  
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(w/o enclosures)