



July 2, 2002

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2002-3578

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164565.

The City of Corpus Christi (the "city") received a request for 1) a directory listing of non-uniform city employees and their job title and department; 2) pet licenses issued during the past six months for non-sterilized animals; and 3) applications on the waiting list for the Emergency Home Repair program. Your request for a decision does not address the portion of the request seeking directory information about city employees. We assume that the city has released this information to the extent that it exists. If you have not, you must do so at this time. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000). You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample of information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. The city raises section 552.101 in conjunction with section 826.0311 of the Health and Safety Code. Section 826.0311 provides in 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

¹We assume that the "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.

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). Section 826.0311 makes certain information in a municipal or county pet registry confidential. The requested information is contained, however, in separate documents titled "Rabies Vaccination Certificate & Pet License." Section 826.0311 is not applicable to this document. Only a pet registry is made confidential under section 826.0311. Section 826.0311 is not applicable to documents such as the "Rabies Vaccination Certificate & Pet License," although it may include information that also is contained in a pet registry. Thus, information contained in the documents titled "Rabies Vaccination Certificate & Pet License" is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 826.0311 of the Health and Safety 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 argue that applications for the Emergency Home Repair program, for which applicants qualify based on family income, are excepted from disclosure under section 552.101. Section 552.101 encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public under common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See id.* at 685; *see also* Open Records Decision No. 611 at 1 (1992).

In Open Records Decision No. 373 (1983) this office considered whether the statutory predecessor to section 552.101 of the Government Code required the City of Austin to withhold from public disclosure applications to a city-administered program to receive a federally funded loan or grant to rehabilitate applicants' homes. The decision explained that the application files contained information about an applicant's sources of income, employment, salary, mortgage payments, assets, medical and utility bills, social security and veterans' administration benefits, verification of employment and mortgage payments, credit history, age, ethnic origin, and family composition. ORD No. 373 at 1.

The decision concluded that the statutory predecessor to section 552.101, incorporating the common-law doctrine of privacy, generally excepted from required public disclosure financial information relating to an individual applicant for a housing rehabilitation grant. *Id.* at 4. However, the remainder of the requested information, including the applicant's age, ethnic origin, and family composition, was not private under common-law privacy. *Id.*

After reviewing your arguments and the submitted application, we conclude that the city must withhold the applicants' monthly income information, which we have marked, as we find such information is private financial information because it is highly intimate

information and there is no legitimate public interest in it. *See* Gov't Code § 552.101; Open Records Decision No. 373 (1983). The remainder of the information is not protected by common-law privacy and therefore, may not be withheld under section 552.101.

However, social security numbers contained in the applications may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that applicants' social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, you should ensure that they were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, you must withhold the income information we have marked in the application for the Emergency Home Repair program under section 552.101 in conjunction with common-law privacy. Social security numbers contained in the applications may be confidential under section 552.101 and the federal Social Security Act. The remaining requested information must be released.

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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 164565

Enc. Submitted documents

c: Mr. Neal Falgoust
Corpus Christi Caller-Times
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(w/o enclosures)