



July 23, 2002

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

OR2002-4030

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# 166044.

The City of Killeen Animal Control Department (the "department") received a request for all records and reports regarding a particular dog attack, and any and all reports regarding any prior incidents involving the same dog or the same address. You have released a redacted copy of a responsive Animal Bite Report to the requestor. You claim, however, 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 reviewed the submitted information.

We first note that one of the submitted documents 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 submitted information includes a completed Animal Bite Report. Thus, this information, which you submitted as Exhibit E, 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 argue that Exhibits C and D are confidential under section 801.353 of the Occupations Code and must therefore be withheld under section 552.101 of the Government Code.¹ Section 801.353 provides in pertinent part:

(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 subpoena.

You indicate that Exhibits C and D were created by a veterinarian concerning a client's dog. You further state that the department has not been provided with a written authorization or waiver signed by the veterinarian's client or an appropriate court order or subpoena to release Exhibits C and D. Based on your arguments and our review of the submitted information, it appears that Exhibits C and D are veterinary records subject to the chapter 801 of the Occupations Code. Thus, this information may be released only in accordance with section 801.353 of the Occupations Code.

We note, however, that section 801.004 of the Occupations Code provides in relevant part that:

[Chapter 801] does not apply to:

...

(7) a person who is engaged in a recognized state-federal cooperative disease eradication or control program or an external parasite control program while the person is performing official duties required by the program[.]

Based on our review of the submitted information, it appears that Exhibits C and D may have been created by a veterinarian engaged in a disease eradication or control program as described in section 801.004(7). Thus, if Exhibits C and D were in fact created by a veterinarian engaged in a program as described in section 801.004(7), then Exhibits C and D are not confidential under section 801.353.

¹ Section 552.101 exempts 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.

You next claim that the highlighted portions of Exhibits C, D, and E are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. 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).

You contend that this statutory provision applies to the highlighted portions of Exhibits C, D, and E because these portions are identical to the information that is contained in a rabies vaccination certificate. We note, however, that Exhibits C, D, and E are not themselves rabies vaccination certificates. Thus, we do not agree that section 826.0211 of the Health and Safety Code applies to any portion of Exhibits C, D, or E. Accordingly, we conclude that the highlighted portions of Exhibits C, D, and E are not made confidential under section 826.0211 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).

Finally, you claim that the highlighted telephone numbers, date of birth, and military identification number on the Animal Bite Report submitted as Exhibit E 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.

(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 these numbers are confidential under section 826.041 because that section does not require the report to include the telephone numbers, date of birth, or military identification 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, date of birth, and military identification 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).

To summarize, we conclude that (1) if Exhibits C and D were not created by a veterinarian engaged in a program as described in section 801.004(7) of the Occupations Code, Exhibits C and D may be released only in accordance with section 801.353 of the Occupations Code; (2) if Exhibits C and D were created by a veterinarian engaged in a program as described in section 801.004(7) of the Occupations Code, Exhibits C and D must be released; and (3) Exhibit E must be released in its entirety.

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,

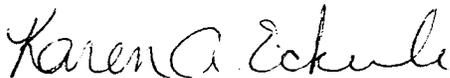
at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 166044

Enc: Submitted documents

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(w/o enclosures)