



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

February 3, 2003

Mr. William M. McKamie  
Special Counsel  
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13750 San Pedro, Suite 640  
San Antonio, Texas 78232

OR2003-0694

Dear Mr. McKamie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176043.

The City of Boerne (the "city"), which you represent, received a request for information relating to a dog brought to the city's animal shelter. In particular, the requestor asks for (1) the date, time, and location the dog was picked up; (2) the date, time, and location that the dog was adopted; (3) proof that the dog was neutered, along with the date, time, and location that the dog was neutered and the identity of the veterinarian; (4) a copy of a contract between the city and Kendall County for animal control; and (5) the name of the person who adopted the dog. You state that information responsive to items one, two, and four of the request will be made available to the requestor. You also state that the city does not have information responsive to item three of the request. The Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). Furthermore, you advise that you have provided a copy of the adoption agreement to the requestor, but you have redacted information identifying the person who adopted the dog. You contend that information identifying the person who adopted the dog is excepted from disclosure under section 552.101 of the Government Code. You also indicate that you have withheld the person's driver's license number under section 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, you state that the city's adoption agreement allows a person adopting an animal to request that the city keep the person's personal information confidential. In this case, the person at issue has requested confidentiality. Thus, you argue that release of this information implicates that person's privacy. We note, however, that information is not confidential under the Public Information Act (the "Act") simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision No. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the statutory predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any agreement specifying otherwise.

Section 552.101 of the Government Code 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. You claim that information identifying the person who adopted the dog is confidential pursuant to sections 826.0211 and 826.0311 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). 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 advise that the city requires a person to provide identifying information when adopting an animal from the city's animal shelter. However, the adoption agreement 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 is applicable to information contained in the city's adoption agreement. Accordingly, we determine that the identifying information of the person who adopted the dog at issue is not made confidential under sections 826.0211 or 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).

Section 552.101 also 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). As you acknowledge, the information you seek to withhold is not highly intimate or embarrassing. See Open Records Decision No. 455 (1987) (home addresses and telephone numbers of private citizens generally not protected under privacy exceptions of Public Information Act). Accordingly, the city may not withhold the new owner's identifying information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

We note that the adoption agreement contains the Texas driver's license number of the person who adopted the dog at issue. Section 552.130 of the Government Code 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[.]

You must withhold the marked Texas driver's license number under section 552.130. The remainder of the responsive information must be released 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 176043

Enc: Submitted documents

c: Ms. Brenda Sealy  
P.O. Box 434  
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(w/o enclosures)