



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 23, 2015

Ms. Andrea D. Russell
Counsel for City of Weatherford
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2015-24513

Dear Ms. Russell:

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# 588043.

The City of Weatherford (the "city"), which you represent, received a request for information pertaining to three specified dogs. You state city will withhold motor vehicle record information under section 552.130(c) of the Government Code.¹ You claim the submitted 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.

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 section encompasses information protected by other statutes. Section 552.101 of the Government Code encompasses section 826.0211 of the Health and Safety Code, which states in relevant part:

(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

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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). We note 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. You state some of the submitted information was compiled from rabies vaccination certificates. In this instance, however, some of the information at issue relates to the requestor. We note section 826.0211 was intended to protect the privacy of pet owners. House Comm. on County Affairs, Bill Analysis, Tex. H.B. 3262, 76th Leg., R.S. (1999) (provision intended to prevent "businesses" from gaining access to "personal information"). Because section 826.0211 protects personal privacy, the requestor has a special right of access to his identifying information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, the names, addresses, and telephone numbers of the owners of the dogs that were compiled from the rabies vaccination certificates must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. Upon review, we find the remaining information at issue is not made confidential by section 826.0211 and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 826.0311 of the Health and Safety Code, which states in relevant part the following:

(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 of the owner of the registered dog or cat is confidential and not subject to disclosure under [the Act]. The information contained in the registry may not include the social security number or the driver's license number of the owner of the registered animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information must maintain the confidentiality of the information, may not disclose the information under [the Act], and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

Health & Safety Code § 826.0311(a), (b). Section 826.0311 applies only to the actual pet registry; it does not apply to the contents of other records, even though those documents may contain the same information as the pet registry. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection); *see also* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987).

You inform us the city does not by ordinance require registration of pets with the city. You state the submitted information is maintained by the city as part of the city's animal shelter's internal registry. Upon review, we find you have failed to demonstrate any of the remaining information identifies or tends to identify the owner of a registered dog or cat or consists of an address, telephone number, or other personally identifying information of the owner of a registered dog or cat for purposes of section 826.0311(a). Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 826.0311 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a separate common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this new standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119.

The city argues the identifying information of individuals who adopted the dogs at issue should be withheld under section 552.101 in conjunction with the common-law physical safety exception. You inform us the dogs at issue originally belonged to the requestor. You further inform us the dogs at issue were taken into custody by the city and, subsequently, adopted by new owners. You state "the requestor has verbally promised to [the city] he will get his [dogs] back from the individuals that have adopted them" (emphasis removed). You claim release of the information at issue could subject the new owners to harassment, retaliation, and physical harm. Upon review, the city has not demonstrated release of any of the information at issue would subject anyone to a specific risk of harm. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*,

No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.² *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Thus, the city must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the names, addresses, and telephone numbers of the owners of the dogs that were compiled from the rabies vaccination certificates must be withheld under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. The city must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

²Section 552.102(a) exempts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

Ref: ID# 588043

Enc. Submitted documents

c: Requestor
(w/o enclosures)