



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 20, 2016

Ms. Paige Mebane  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2016-16351

Dear Ms. Mebane:

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# 619197.

The City of Fort Worth (the "city") received a request for all dog bites or other violations regarding dogs owned by a named individual at a specified address. You state you have released some information. You claim some of 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.

Initially, you indicate some of the submitted information is not responsive to the instant request for information because it does not pertain to the dogs at issue. This ruling does not address the public availability of the non-responsive information, which you have marked, and that information need not be released in response to this request.

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, such as 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 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 a portion of the submitted information includes rabies vaccination certificates. Therefore, the city must withhold the owner's identifying information within the rabies vaccination certificates under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code.

You also raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279 at 1-2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988)*. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. *Open Records Decision No. 549 at 5 (1990)*.

You claim the informer's privilege for the identity of a complainant who reported alleged violations of sections of the Fort Worth City Code to the city, which provide for fines of up to \$2,000. You state the alleged violations were reported to "city staff charged with the enforcement" of the city codes at issue. You state you have no indication the identity of the complainant is already known by the subject of the complaints. Based on your representations and our review, we conclude the city may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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.<sup>1</sup> *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. You indicate you have withheld dates of birth pursuant to Open Records Letter No. 2016-00620 (2016). In that ruling, this office issued a previous determination that authorizes the city to withhold dates of birth of members of the public under section 552.101 in conjunction with common-law privacy under certain circumstances. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)). However, we find one date of birth, which we have marked, pertains to an individual who has been de-identified; thus, this person's privacy interests are protected. Accordingly, the city may not withhold the date of birth pertaining to the de-identified individual under section 552.101 on this basis. However, the city must withhold the remaining date of birth you marked under section 552.101 in conjunction with common-law privacy pursuant to Open Records Letter No. 2016-00620.

In summary, the city must withhold the owner's identifying information within the rabies vaccination certificate under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. The city may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. With the exception of the date of birth of the de-identified individual, the city must withhold the remaining date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy pursuant to Open Records Letter No. 2016-00620. The remaining responsive information must be released.

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/>

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<sup>1</sup>Section 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).

[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,

A handwritten signature in black ink, appearing to read 'JB' with a stylized flourish extending to the right.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/eb

Ref: ID# 619197

Enc. Submitted documents

c: Requestor  
(w/o enclosures)