



Mike Stafford
Harris County Attorney

April 11, 2005

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The Honorable Greg Abbott
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0338-GA

APR 13 2005

OPINION COMMITTEE

FILE # ML-44188-05

I.D. # 044189

Attention: Opinion Committee

Re: Whether Harris County Animal Control must provide to PetData, Inc. certain information made confidential under sections 826.0211 and 826.0311 of the Health and Safety Code;
C.A. File No. 05GEN0329

Ladies and Gentlemen:

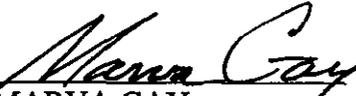
Harris County Animal Control maintains rabies vaccination certificates and a registry with the names and addresses of owners of vaccinated dogs and cats. Such personally identifying information is made confidential by sections 826.0211 and 826.0311 of the Health and Safety Code, which provides that the confidential information may be disclosed only to a governmental entity "for purposes related to the protection of public health and safety." Furthermore, sections 826.0211(b) and 826.0311(b) of the Health and Safety Code prohibit the use of such information for a purpose that does not "directly relate to the protection of public health and safety." Additionally, sections 826.0211(c) and 826.0311(c) provide that a person commits an offense punishable by both a fine and confinement in the county jail if the person distributes information that is confidential under sections 826.0211 and 826.0311 of the Health and Safety Code.

Harris County Animal Control has received a letter from PetData, Inc. asking County Animal Control to submit "at least monthly a record of each rabies vaccination administered to pets owned by City of Houston residents" including the owner's name, address, and phone number. The letter states that PetData, Inc. is a new contractor of the City of Houston Bureau of Animal Regulation and Control and is handling all aspects of Houston animal licensing for the City. Apparently, the City of Houston has not previously requested such information from County Animal Control.

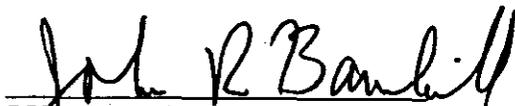
We request your opinion as to whether such revenue collection is a purpose related to the protection of public health and safety, and whether County Animal Control must provide the requested information to PetData. Because of the criminal sanctions for violation of section 826.0211 and 826.0311, we are requesting your opinion. Our Memorandum Brief is enclosed.

Sincerely,

MIKE STAFFORD
County Attorney

By: 
MARVA GAY
Assistant County Attorney

Approved:


JOHN R. BARNHILL
First Assistant County Attorney

MEMORANDUM BRIEF

Harris County Animal Control ("County Animal Control") vaccinates an average of 5,500 dogs and cats each year against rabies, issues rabies vaccination certificates to owners pursuant to section 826.021 of the Health and Safety Code, and maintains a registry of dogs and cats pursuant to section 826.031 of the Health and Safety Code. See TEX. HEALTH & SAFETY CODE ANN. §§ 826.021 and 826.031 (Vernon 2003). The main facility where County Animal Control vaccinates dogs and cats is located within the City of Houston.

County Animal Control has received a letter from PetData, Inc. ("PetData"), which apparently has a contract with the City of Houston Bureau of Animal Regulation and Care ("Houston BARC") to collect animal licensing fees. PetData is requesting that County Animal Control periodically submit to PetData a record of each rabies vaccination administered to dogs and cats owned by residents of the City of Houston, including the owner's name, address, and phone number. Apparently, PetData mailed the letter and accompanying instructions to County Animal Control and other veterinarians located within the City of Houston. The PetData letter reads, in pertinent part, as follows:

Dear Veterinarian and Clinic Staff,

By now, you should have received a letter from the Bureau of Animal Regulation and Control (BARC) announcing the change in animal licensing program. Here at PetData, animal licensing is our only business. . . .

Beginning in August, PetData began handling all aspects of Houston animal licensing including entry of license records, processing of licensing mail, providing license tags to citizens, and handling all customer service related to animal licensing. Going forward, we will also receive and process your rabies vaccination reports. Attached are instructions for submitting our monthly rabies information.

The attached instructions read, in pertinent part, as follows:

Since PetData will be processing all rabies vaccination records on behalf of BARC, we ask that you mail them to our office either weekly or monthly. Please keep in mind that rabies reporting by veterinarians is required by City of Houston Ordinance.

1. Please submit to our office at least monthly a record of each rabies vaccination administered to pets owned by City of Houston residents. You are not required to submit rabies information for owners that live outside of the City of Houston, but you may include those if sorting them out would be a problem.

2. Each record should include the owner's name, address and phone number, pet's name, species, breed, sex, color, age (if available), weight, and spay/neuter status. It should also include at minimum, a rabies vaccination date, and the expiration of the vaccination date.
3. Records may be submitted in one of three forms:
 - a. A copy of the individual rabies certificate.
 - b. A vaccination report, which provides all the above information for each vaccination, but is formatted to include multiple records per page.
 - c. An electronic file exported from your software program submitted either via email or on disk through the mail.

* * * * *

Postcards will be mailed to residents who have vaccinated their pets and have not yet purchased a license to help boost awareness of the licensing ordinance. . . .

Letter and Instructions from PetData, Inc. to Veterinarian and Clinic Staff (Feb. 2, 2005) [*emphasis added*]. Therefore, PetData is asking County Animal Control to submit personally identifying information of the owners of cats and dogs already vaccinated by County Animal Control.

As required by sections 826.0211 and 826.0311 of the Health and Safety Code, County Animal Control keeps confidential the information contained in each 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. Section 826.0211(a) of the Health and Safety Code reads as follows:

Information 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.

TEX. HEALTH & SAFETY CODE ANN. § 826.0211(a) (Vernon 2003) [*emphasis added*]. Furthermore, County Animal Control keeps confidential the information contained in the County registry of dogs and cats 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. Section 826.0311(a) of the Health and Safety Code reads as follows:

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 Chapter 552, Government Code.

TEX. HEALTH & SAFETY CODE ANN. § 826.0311(a) (Vernon 2003). However, pursuant to sections 826.0211(b) and 826.0311(b) of the Health and Safety Code, the confidential information may be disclosed to a governmental entity “for purposes related to the protection of public health and safety.” Furthermore, the governmental entity that receives the information must maintain the confidentiality of the information and “may not use the information for a purpose that does not directly relate to the protection of public health and safety.” Section 826.0211(b) of the Health and Safety Code reads:

The information may be disclosed only to a governmental entity for purposes related to the protection of public health and safety. A government entity that receives the information, including a county or municipality that registers dogs and cats under Subchapter D, must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

TEX. HEALTH & SAFETY CODE ANN. § 826.0211(b) (Vernon 2003) [*emphasis added*]. Similarly, section 826.0311(b) reads:

The information may be disclosed only to a governmental entity for purposes related to the protection of public health and safety. A government entity that receives the information must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

TEX. HEALTH & SAFETY CODE ANN. § 826.0311(b) (Vernon 2003)[*emphasis added*]. Therefore, County Animal Control is authorized to disclose otherwise confidential information of the owner of a vaccinated animal only to a governmental entity for purposes related to the protection of public health and safety. Furthermore, governmental entity that receives such personally identifying information is prohibited from using the information for a purpose that does not “directly” relate to the protection of public health and safety.

Pursuant to sections 826.0211(c) and 826.0311(c) of the Health and Safety Code, a person commits an offense punishable by both a fine and confinement in the county jail if the person distributes such information for a purpose that does not relate to the protection of public health and safety. See TEX. HEALTH & SAFETY CODE ANN. §§ 826.0211(c) and 826.0311(c) (Vernon 2003).

The City of Houston ordinance, which is referred to in PetData’s letter, imposes certain duties on veterinarians and reads, in pertinent part, as follows:

- (d) It shall be the duty of each veterinarian who vaccinates any dog or cat for rabies within the city to . . .

* * * * *

- (2) On or before the seventh day following the administration of the vaccination furnish to the chief of the city's bureau of animal regulation and care a copy of the veterinarian's fully executed vaccination certificate for the animal setting forth:

- (a) A description of the dog or cat including its breed, age, color and sex;
- (b) Whether the animal has been neutered (if known or determinable by the veterinarian);
- (c) The serial number of the vaccination tag furnished;
- (d) The name and the current address of the person owning or keeping the animal; and
- (e) The number of the City of Houston registration tag worn by the animal, if any.

CITY OF HOUSTON, TEX., ORDINANCE art. IV, § 6-96 (Ord. No. 85-296, § 7, 3-1-85; Ord. No.88-689, §§ 1,2, 4-27-88) [*emphasis added*]. The Ordinance requires veterinarians located in the City of Houston to provide the City with the name and current address of the person owning or keeping the animal. We have no information indicating that the City of Houston has previously requested the names and addresses of the owners of dogs and cats vaccinated by County Animal Control.

The City of Houston, through its agent PetData, is requesting that County Animal Control provide the City of Houston with personally identifying information made confidential by sections 826.0211(a) and 826.0311(a) of the Health and Safety Code. According to the PetData instructions, “[p]ostcards will be mailed to residents of the City of Houston who have vaccinated their pets and have not yet purchased a license” from the City of Houston. It appears that PetData is seeking to use this confidential information for a purpose that does not relate to the protection of public health and safety but, rather, to collect a City licensing fee from the owners of dogs and cats that have already been vaccinated.

PetData states in its recent letter that “animal licensing is our only business” PetData does not vaccinate dogs and cats for rabies or other diseases. PetData does not provide animal care, housing, or veterinary services. PetData does not perform services to prevent or control infectious diseases in animals. PetData does not capture or control dogs and cats. PetData does not perform spay or neutering services. PetData does not microchip dogs and cats. In fact, PetData does not appear to perform functions related to protection of public health and safety. Rather, PetData appears to operate solely as a collection agent for the City. PetData is seeking confidential owner information to generate revenue for the City of Houston by collecting a license fee from owners of already-vaccinated dogs and cats. Collecting and generating revenue is a purpose that may not “directly relate to the protection of public health and safety” as is required by sections 826.0211(b) and 826.0311(b) of the Health and Safety Code.

County Animal Control has already vaccinated the dogs and cats. Vaccinating dogs and cats is related to the protection of public health and safety. However, collecting names of owners of dog and cats that have already been vaccinated by County Animal County is not related to the protection of public health and safety. Furthermore, a direct relationship to the protection of public health and safety is required for use of confidential owner information under sections 826.0211(b) and 826.0311(b) of the Health and Safety Code.

It appears that sections 826.0211(b) and 826.0311(b) of the Health and Safety Code prohibit Harris County Animal Control from disclosing to PetData the personally identifying information of owners of dogs and cats already vaccinated by County Animal Control.