



July 14, 2000

Ms. Kathryn H. Davis
Acting City Attorney
City of Killeen
101 North College
Killeen, Texas 76541

OR2000-2655

Dear Ms. Davis:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137135.

The City of Killeen (the "city") received a request for information relating to the identity of an individual who adopted a dog that had been taken into custody by Killeen Animal Control. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. We will begin with the city's claim that the requested information is confidential under section 552.101 in conjunction with constitutional law. The constitutional right to privacy protects two kinds of interests. See Open Records Decision Nos. 600 at 3-5 (1992), 455 at 3-7 (1987); see also *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See Open Records Decision No. 455 at 3-7 (1987); see also *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981). The second constitutionally protected interest is in freedom from public disclosure of certain personal matters. See Open Records Decision No. 455 at 6-7 (1987); see also *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985), *reh'g denied*, 770 F.2d 1081 (1985), *cert. denied*, 474 U.S. 1062 (1986). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." Open Records Decision No. 455 at 8 (1987), quoting *Ramie v. City of Hedwig Village*, 765 F.2d at 492.

Having considered your arguments, we are not persuaded that the requested information is excepted from disclosure under section 552.101 in conjunction with constitutional law.

Statutory privacy under section 552.101 typically requires express language providing either that certain information is confidential or that it shall not be released to the public. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987). As you correctly point out, owner-identifying information in a rabies vaccination certificate or a municipal or county pet registry is confidential under certain provisions of the Health and Safety Code. *See* Health & Safety Code §§ 826.0211(vaccination certificate), 826.0311 (dog and cat registry). You argue that “[t]he information protected by the Health and Safety Code is *identical* to the new owner information in the adoption contract used by Killeen Animal Control” and that “[t]he clear intent of the Legislature in excluding this type of information from disclosure is to maintain animal owners’ privacy” (emphasis in original). You do not advise us, however, and we have no other basis for concluding, that either of these statutes is specifically applicable to the information that you seek to withhold. Accordingly, we are unable to conclude that the requested information is confidential under section 552.101 in conjunction with any statute. *See* Gov’t Code § 552.006 (providing that Gov’t Code ch. 552 does not authorize withholding of public information except as expressly provided).

You also seek to withhold the identity of the adopted dog’s new owner under section 552.101 in conjunction with the common law informer’s privilege. Section 552.101 also excepts from disclosure information deemed confidential by judicial decision, and the informer’s privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. *See* Open Records Decision Nos. 515 at 3 (1988), 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. It also protects the identities of individuals 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.” *See* Open Records Decision No. 279 at 2 (1981), *citing* Wigmore, *Evidence*, § 2374, at 767 (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 4-5 (1988). Furthermore, as its purpose is to protect the flow of information to the governmental body, rather than to protect the interests of the person who furnishes the information, the informer’s privilege, unlike other claims under section 552.101 of the Government Code, can be waived. *See* Open Records Decision Nos. 630 at 4 (1994), 549 at 6 (1990). As the information in question here does not involve a report of any violation of law, the requested information is not excepted from disclosure under section 552.101 in conjunction with the common law informer’s privilege.

You also raise section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). Motor vehicle record information, including a Texas driver's license number, must be withheld from disclosure in accordance with section 552.130.

In summary, the requested information is not confidential under section 552.101 of the Government Code in conjunction with constitutional law, statutory authority, or the common law informer's privilege. However, motor vehicle record information must be withheld from disclosure in accordance with section 552.130. The city must release the remaining information 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).

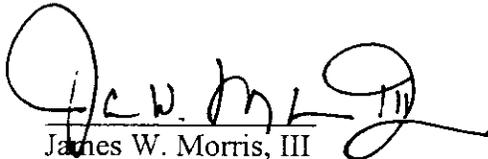
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', written over a horizontal line.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/pr

Ref: ID# 137135

Encl. Submitted documents

cc: Mr. Tyrone McLaurin
5005 Norton Drive
Killeen, Texas 76542
(w/o enclosures)