



March 15, 2002

Ms. Sara Hartin
Assistant City Attorney
City of Killeen
101 North College
Killeen, Texas 76541

OR2002-1278

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#160013.

The City of Killeen Animal Control Department (the “department”) received a request for copies of an incident report pertaining to a dog bite that occurred at 1602 Cole Street on September 1, 2001. You state that you have released some responsive information to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You claim that the highlighted portions of the Animal Bite Report are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with sections 826.0211 and 826.0311 of the Health and Safety Code.¹ 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

¹ Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information protected by other statutes.

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 contend that these two statutory provisions apply to the highlighted portions of the Animal Bite Report because these portions are identical to the information that is contained in the City of Killeen’s registry of animals and rabies vaccination certificate. We note, however, that the Animal Bite Report 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 applies to any portion of the Animal Bite Report. Accordingly, we conclude that the highlighted portions of the Animal Bite Report are not made confidential under sections 826.0211 or 826.0311 of the Health and Safety Code and, thus, are not excepted from disclosure pursuant to section 552.101 of the Government Code.

You also claim that the highlighted telephone number on the Animal Bite Report is excepted from disclosure pursuant to section 552.101 in conjunction with section 826.041 of the Health and Safety Code. Section 826.041 provides in pertinent part:

(a) A person who knows of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid, shall report the incident or animal to the local rabies control authority of the county or municipality in which the person lives, in which the animal is located, or in which the exposure occurs.

(b) The report must include:

- (1) the name and address of the victim and of the animal’s owner, if known; and
- (2) any other information that may help in locating the victim or animal.

(c) The local rabies control authority shall investigate a report filed under this section.

Health & Safety Code § 826.041. You contend that this number is confidential under section 826.041 because that section does not require the report to include the telephone number of the animal’s owner. You also contend that the number is confidential under section 826.041 because the number is not listed in the local telephone directory. We note that, in order for information to fall within the scope of section 552.101, a statute explicitly must require confidentiality. A confidentiality requirement will not be inferred from

statutory structure. *See* Open Records Decision No. 465 at 4-5 (1987). Based on our review of your arguments and section 826.041, we do not agree that this section makes a telephone number of an animal's owner expressly confidential. We also note that information is not confidential under the Public Information Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Industrial Foundation v. Texas Indus. Accident Board*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). Additionally, information is not excepted from disclosure merely because it is furnished with the expectation that access to it will be restricted. *See* Open Records Decision No. 180 (1977). Accordingly, the department may not withhold the highlighted telephone number on the Animal Bite Report from disclosure under section 552.101 in conjunction with section 826.041 of the Health and Safety Code. Consequently, the department must release all highlighted portions of the Animal Bite Report 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).

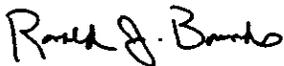
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 160013

Enc. Submitted documents

cc: Ms. Kessha Spruill
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