



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2003

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

OR2003-6669

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# 187401.

The City of Killeen (the "city") received a request for information pertaining to any complaint received by the city regarding a dog kept at a specified address. You state that the city has released some responsive information to the requestor. You claim, however, that portions of the remaining requested information are not subject to the Public Information Act (the "Act"). You also claim that portions of the remaining requested information are excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, and 552.305 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the information that you submitted as Exhibit H constitutes judicial records that are not subject to the Act. We note that the Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). It does not apply to records of the judiciary. *See* Gov't Code § 552.003(1)(B). Information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act. Gov't Code § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the

¹ Although you raise section 552.305 as an applicable exception to disclosure, we note that this section of the Government Code does not constitute an exception to disclosure under the Act. Accordingly, we do not address whether any portion of the submitted information is excepted from disclosure under section 552.305 of the Government Code.

judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ); Open Records Decision No. 646 (1996) at 4 ("function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act."). Based on our review of your representations and Exhibit H, we agree that the responsive information contained in that exhibit constitutes judicial records of the city's municipal court that are not subject to disclosure under the Act. Accordingly, we conclude that the city need not release the responsive information in Exhibit H to the requestor. *See* Attorney General Opinion DM-166 (1992); *see also* Open Records Decision No. 618 (1993) (acknowledging common-law right to copy and inspect certain judicial records).

You also claim that portions of the information you submitted as Exhibits C, D, F, and G are excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert that these exhibits pertain to pending criminal prosecutions. Based on our review of your representations and the information that you seek to withhold in these exhibits under section 552.108(a)(1), we find that the release of this information would, therefore, "interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Accordingly, we conclude that section 552.108(a)(1) is applicable to this particular information and that the information may be withheld pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the city maintains the discretion to release all or part of this information that is not otherwise confidential by law.²

In addition, you claim that the highlighted portions of the information you submitted as Exhibit E are excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(2). You contend that Exhibit E is associated with a case in which no charges were filed against the owner of the dog that had allegedly bitten an individual. Thus, we understand you to contend that Exhibit E pertains to a criminal investigation that has concluded in a final result other than conviction or deferred

² Because we base our ruling here on section 552.108(a)(1), we need not address the applicability of section 552.103 of the Government Code.

adjudication. Consequently, we agree that section 552.108(a)(2) is applicable to the highlighted information in Exhibit E and that this information may be withheld from the requestor on that basis. We note again, however, that the city maintains the discretion to release all or part of this particular information that is not otherwise confidential by law.

Next, you claim that the information that you submitted as Exhibit I is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations Code.³ Section 801.353 provides in pertinent part:

(1) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian's client.

(a) veterinarian may not be required to release information concerning the veterinarian's care of an animal, except on the veterinarian's receipt of:

(1) a written authorization or other form of waiver executed by the client; or

(2) an appropriate subpoena.

Occ. Code § 801.353. Section 801.353 limits a veterinarian's release of information concerning the veterinarian's care of an animal to certain circumstances. *See id.* This section, however, does not prohibit a governmental body from releasing information to a requestor that is provided to the governmental body by a veterinarian. Furthermore, we note that section 801.353 does not expressly make information confidential. In order for section 552.101 of the Government Code to except from disclosure information that is requested of a governmental body, a statute must contain language that expressly makes the information confidential. *See Open Records Decision Nos. 658 at 4 (1998), 649 at 3 (1996) (language of confidentiality provision controls scope of protection), 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating information shall not be released to public), 465 at 4-5 (1987). Confidentiality cannot be implied from the structure of a statute or rule. See Open Records Decision No. 465 at 4-5 (1987).* In this instance, we find that Exhibit I is not made expressly confidential by section 801.353. Accordingly, we conclude that the city may not withhold any portion of Exhibit I under section 552.101 of the Government Code.

You also claim that the yellow highlighted portions of Exhibits C, D, and I are excepted from disclosure pursuant to section 552.101 in conjunction with section 826.0211 of the Health

³ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See Gov't Code § 552.101.* Section 552.101 encompasses information that is protected from disclosure by other statutes.

and Safety Code. 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). You indicate that this statutory provision applies to the yellow highlighted portions of these exhibits because they are identical to the information that is contained in a rabies vaccination certificate. We note, however, that these exhibits are not themselves rabies vaccination certificates. Thus, we do not agree that section 826.0211 of the Health and Safety Code applies to any portion of these exhibits. Accordingly, we conclude that the city may not withhold any of the yellow highlighted portions of these exhibits under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. *See* Open Records Decision Nos. 649 at 3 (1996) (language of confidentiality provision controls scope of protection), 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating that information shall not be released to public). Consequently, the city must release the entirety of Exhibit I to the requestor. The city must also release the yellow highlighted portions of Exhibit C to the requestor.

Finally, you contend that the yellow highlighted portions of Exhibit D are excepted from disclosure pursuant to section 552.101 in conjunction with the constitutional and common-law rights to privacy. Section 552.101 also encompasses the constitutional and common-law rights to privacy. Information is protected from disclosure under the common-law right to privacy if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

The constitutional right to privacy encompasses two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). The first type of constitutional privacy protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *See id.* The scope of information protected by constitutional privacy is narrower than that under the doctrine of common-law privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

In Open Records Decision No. 455 (1987), this office determined that home addresses and telephone numbers ordinarily do not qualify as the kind of "intimate aspects of human affairs" that are private. Furthermore, disclosure of an individual's home telephone number is not an invasion of privacy. *See* Open Records Decision No. 554 (1990). Finally, information is not protected from disclosure merely because it is furnished with the expectation that access to it will be restricted. *See* Open Records Decision No. 180 (1977). After carefully reviewing your arguments and the yellow highlighted information in Exhibit D, we find that no portion of this information is highly intimate or embarrassing or would otherwise implicate the constitutional or common-law privacy rights of any individual involved in this matter. Accordingly, we conclude that the city may not withhold any of the yellow highlighted information in Exhibit D under section 552.101 of the Government Code in conjunction with the constitutional or common-law rights to privacy. Consequently, the city must release the yellow highlighted information in Exhibit D to the requestor.

In summary, the city may withhold the responsive information in Exhibit H pursuant to section 552.003 of the Government Code. The city may withhold the information in Exhibits C, D, F, and G that it seeks to withhold under section 552.108(a)(1) pursuant to that exception to disclosure. The city may also withhold the highlighted information in Exhibit E pursuant to section 552.108(a)(2) of the Government Code. The city must release the remaining submitted information to the requestor to the extent that it has not already done so.

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

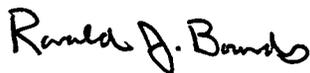
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Dep't of Pub. 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/lmt

Ref: ID# 187401

Enc. Submitted documents

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