



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2007

Mr. David M. Swope
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2007-12326

Dear Mr. Swope:

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# 289718.

Harris County Veterinary Health Services (the "county") received a request for the following: 1) a list of all databases maintained by the county that may be released under the Act; 2) a description of the information contained in the databases; 3) a list of all databases maintained by the county that may not be released under the Act and the reason that they may not be released; 4) a list of all databases maintained by the county that could be copied and obtained if the county were to design a program to exclude confidential information and the charge to design such a program and periodically run the program; 5) a printout from the county's existing databases to show what information can be found in them; 6) databases that would reveal pet names used by pet owners; 7) statistics on the breeds of dogs and cats registered or licensed by the county; 8) statistics on dog bites, where they occur, and the breed of dogs that bite; 9) statistics on yearly and monthly animal intake by the county animal shelter; 10) statistics on yearly and monthly animal adoptions; and 11) statistics on yearly and monthly euthanizations from 1995 until the date of the request. You state that the county has released information responsive to items 6 through 11 of the request. You assert that some of the remaining information is not subject to the Act. In the alternative, you claim that the remaining information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. In addition, you assert that release of the remaining information

would implicate the protected proprietary interests of HLP, Inc. (“HLP”). You state that, pursuant to section 552.305 of the Government Code, the county notified HLP of the request for information and of its right to submit arguments explaining why this information should not be released. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments from HLP. We have considered all arguments and reviewed the submitted representative sample of information.¹

Initially, we must address your claim that the requestor seeks information that is not subject to the Act. The Act applies to “public information,” which is defined as 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 or for a governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002. Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 (1995). You assert that the submitted information consists of “tools for the manipulation of data and descriptions of those tools and how to use them” and that “the submitted materials function solely as tools to maintain, manipulate, or protect public property” Upon review, however, we find that the submitted documents reveal information regarding animals registered with the county, the vaccination status of the animals, addresses of animals’ owners, bite investigations, animals maintained in the county kennel, and financial transactions between the county and members of the public. This information is maintained in connection with the transaction of the county’s official business. Therefore, the submitted information is public information as defined by section 552.002, and is subject to disclosure under the Act unless subject to an exception to disclosure. Accordingly, we will consider the exceptions to disclosure raised by the county and HLP.

We next address the contention of the county and HLP that the submitted information must be withheld under the terms of a licensure agreement between the county and HLP. We note that information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990)

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). Consequently, unless the submitted information comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

We next address the exceptions to disclosure raised by the county. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 826.0311 of the Health and Safety Code, in relevant part, states the following:

(a) 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. The information contained in the registry may not include the social security number or the driver’s license number of the owner of the registered animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person 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.

Health & Safety Code § 826.0311(a), (b).² Section 826.0311 only applies to the actual pet registry; it is not applicable to the contents of other records, even though those documents may contain the same information as the pet registry. *See* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). You do not inform us that the submitted records are contained in the county’s pet registry. Thus, we find you have failed to establish that the submitted information is confidential under section 826.0311 of the

²Act of May 28, 1999, 76th Leg., R.S., ch. 1069, 1999 Tex. Gen. Laws 3921, amended by Act of May 25, 2007, 80th Leg., R.S., ch. 686, § 2, 2007 Tex. Sess. Law. Serv. 1268–69.

Health and Safety Code, and the county may not withhold this information under section 552.101 of the Government Code on that ground.

Section 552.101 also encompasses 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 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 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." *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 or law. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (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 note that the county "is responsible for enforcing the Rabies Control Act of 1987, the rules of the Texas Board of Health that compromise the minimum standards of rabies control, the Harris County rules to control rabies and the rules adopted by the Texas Board of Health under the quarantine provisions of the Rabies Control Act of 1981" and that a "[v]iolation of the county's Rabies/Animal Control Rules is a class C misdemeanor." You state that portions of the responsive information "could identify the person who complained to the [county] regarding a possible violation of animal control laws." However, the submitted information does not reveal the identities of any informers or that a violation of a statute enforced by the county was reported. Thus, you have not demonstrated that release of the submitted information would reveal the identity of an individual who reported a violation of a statute enforced by the county. Therefore, the county may not withhold any of the submitted information on the basis of the informer's privilege under section 552.101 of the Government Code.

We next address the arguments submitted under section 552.110 of the Government Code. The county and HLP assert that some of the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects: 1) trade secrets, and 2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. Gov't Code § 552.110(a), (b). Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See id.* § 552.110(a). A "trade secret"

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be

a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing this information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* ORD 232. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. ORD 552. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary

factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); ORD 661.

After reviewing the submitted information and arguments, we find that the county and HLP have failed to demonstrate that any portion of the submitted information meets the definition of a trade secret. We therefore determine that none of the submitted information may be withheld under section 552.110(a) of the Government Code. Further, we find that neither the county nor HLP has provided specific factual evidence demonstrating that release of the requested information would result in substantial competitive harm to the company. Accordingly, we conclude that none of the submitted information is excepted from disclosure under section 552.110(b) of the Government Code.

Finally, HLP asserts that the submitted information is made confidential by copyright. We note that copyright law does not make information confidential for the purposes of section 552.101. *See* Open Records Decision No. 660 at 5 (1999). A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990). Thus, the county may not withhold the submitted information under section 552.101 of the Government Code in conjunction with copyright law, but any information that is protected by copyright may only be released in accordance with copyright law. As no other exceptions to disclosure are raised, the submitted information must be released 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/eeg

Ref: ID# 289718

Enc. Submitted documents

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