



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2013

Ms. Rebecca Hendricks Brewer
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2013-17205

Dear Ms. Brewer:

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# 501004.

The Wylie Police Department (the "department"), which you represent, received two requests for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 826.0211 of the Health and Safety Code, which provides in part:

(a) Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under [the Act]. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

Health & Safety Code § 826.0211(a). We note section 826.0211 is applicable only to information contained in a rabies vaccination certificate or in a record compiled from information contained in one or more rabies vaccination certificates. A portion of the

submitted information consists of vaccination certificates. In this instance, however, the information at issue relates to the second requestor's insured. We note section 826.0211 was intended to protect the privacy of pet owners. House Comm. on County Affairs, Bill Analysis, Tex. H.B. 3262, 76th Leg., R.S. (1999) (provision intended to prevent "businesses" from gaining access to "personal information"). Because section 826.0211 protects personal privacy, the second requestor has a special right of access to her insured's identifying information under section 552.023 of the Government Code. *See Gov't Code § 552.023(a)* ("A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, the owner's identifying information within the vaccination certificates, which we have marked, must be withheld from the first requestor under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. Upon review, we find the remaining information is not made confidential by section 826.0211 and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 826.0311 of the Health and Safety Code. Section 826.0311 states in relevant part:

(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 [the Act]. 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 [the Act], 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). 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). The remaining information consists of an incident report, post-run/call report, pet adoption and veterinary records, and an animal bite report. You do not explain, and we are unable to discern, how this

information consists of the actual pet registry. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Upon review, we find you have failed to establish any of the submitted information is contained in a municipal or county registry of dogs and cats and identifies or tends to identify the owner of a registered dog or cat. Therefore, the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 826.0311 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note, however, the individual whose privacy interests are at issue is the insured of the second requestor. Accordingly, the second requestor has a special right of access under section 552.023 of the Government Code to the information pertaining to her insured, and the department may not withhold this information from her under section 552.101 in conjunction with common-law privacy. See Gov't Code § 552.023; see also ORD 481 at 4. However, the department must withhold from the first requestor the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130(a)(1). We note the submitted information contains driver's license information, including the second requestor's insured's driver's license information. However, because section 552.130 protects personal privacy, the second requestor has a right of access to her insured's driver's license information under section 552.023 of the Government Code. See *id.* § 552.023(a); ORD 481 at 4. Therefore, the department must withhold the driver's license information we have marked under section 552.130 of the Government Code; however, the department must

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

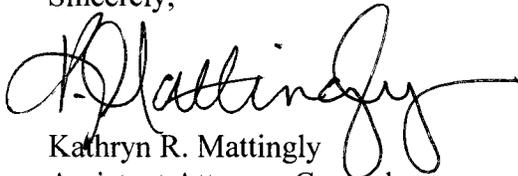
release to the second requestor the driver's license information pertaining to the second requestor's insured.²

In summary, the department must withhold from the first requestor the information we have marked under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code and common-law privacy. The department must withhold the driver's license information we have marked under section 552.130 of the Government Code; however, the department must release to the second requestor the driver's license information pertaining to the second requestor's insured. The department must release the remaining information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/tch

Ref: ID# 501004

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Gov't Code § 552.130(d), (e).