



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2014

Ms. Monica Hernandez
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2014-13358

Dear Ms. Hernandez:

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# 531317 (COSA File Nos. W027757 and W028001).

The City of San Antonio (the "city") received two requests from different requestors for information related to a named dog and a specified dangerous dog determination. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information you have marked Attachments C and C1 is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Attachments C and C1 consist of a completed investigation subject to subsection 552.022(a)(1). The city office must release the completed investigation pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold the submitted information under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold Attachments C and C1 under section 552.103 of the Government Code. However, because section 552.101 of the Government Code can make information confidential under the Act, we will address the applicability of that section to the submitted information. Further, we note portions of the information at issue are subject to sections 552.130 and 552.137 of the Government Code.¹ Because these sections can also make information confidential under the Act, we will address their applicability to the submitted information. Additionally, we will address your arguments under section 552.103 for the information not subject to section 552.022(a)(1).

Section 552.103 of the Government Code provides, in relevant part, as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [[1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, an attorney for a potential opposing party making a demand for payment and asserting an intent to sue if such payments are not made. Open Records Decision Nos. 555 at 3 (1990), 346 (1982). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party threatened to sue on several occasions and hired an attorney. *See* Open Records Decision No. 288 at 2 (1981). However, an individual publicly threatening to bring suit against a governmental body, but who does not actually take objective steps toward filing suit, is not concrete evidence that litigation is reasonably anticipated. *See* Open Records Decision No. 331 at 1-2 (1982).

You inform us the submitted information relates to an appeal of a dangerous dog determination case. You state an initial dangerous dog determination finding was made by the city's Animal Care Services Department (the "department") pursuant to section 5-75 of the City Code on May 5, 2014. You inform us, and provide documentation demonstrating, an appeal of that finding was filed in Bexar County Court at Law No. 10 on May 21, 2014. However, we note the two requests for information were received by the city on May 12, 2014, and May 19, 2014. Therefore, we find litigation was not pending on the dates the city received the instant requests. Accordingly, we find you have failed to demonstrate the city was involved in pending litigation relating to the requested information at time the city received these requests for information.

You further claim the city reasonably anticipated litigation on the dates the requests for information were received. You state cases such as the one at issue here "often attract publicity and due to the nature of the incidents, the [c]ity anticipates these cases will be litigated." You further state that, at the time the city received the requests for information, the time frame to appeal the finding at issue had not expired. You do not inform us, however, that any party had taken any concrete steps toward commencing an appeal on the date the city received the instant requests for information. Having considered your representations, we find the mere possibility of an appeal does not establish that litigation was pending or reasonably anticipated when the city received the requests for information. *See* Gov't Code § 552.103(c); ORD 452 at 4; *see also* ORD 331 at 1-2

(mere chance of litigation not sufficient to trigger statutory predecessor to Gov't Code § 552.103). Thus, we conclude you have failed to demonstrate the city reasonably anticipated litigation when it received the requests for information. Therefore, the city may not withhold the any portion of the submitted information under section 552.103(a) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that other statutes make confidential. Govt' Code § 552.101. You claim the information you have marked Attachment C4 is confidential under section 801.353 of the Occupations Code. This section provides in part:

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

(b) 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 court order or subpoena.

...

(f) A veterinarian does not violate this section by providing the name or address of a client, or the rabies vaccination status of a specific client's specific animal, to a public health authority, veterinarian, physician, or other licensed health care professional who requests the identity of the client to obtain information for:

(1) the verification of a rabies vaccination;

(2) other treatment involving a life-threatening situation; or

(3) a public health purpose.

(g) A public health authority that receives information under [s]ubsection (f) shall 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.

Occ. Code § 801.353(a)-(b), (f)-(g). Section 801.353 limits a veterinarian's release of information concerning the veterinarian's care of an animal to certain circumstances. *See id.* We note a portion of Attachment C4, which we have marked, consists of veterinary records created by the department's veterinary staff. You state none of the information at issue has been released to the public. You further state the city has not received written authorization or waiver executed by the animals' owner. *See id.* § 801.351(a)(1) (defining "client" as "owner or other caretaker of the animal"). Based on your arguments and our review, we conclude the information we have marked in Attachment C4 consists of veterinary records generated by the city subject to the chapter 801 of the Occupations Code. Thus, this information may be released only in accordance with section 801.353 of the Occupations Code.

Subsection 801.353(g) of the Occupations Code prohibits the public disclosure of information obtained by a public health authority from a veterinarian pursuant to subsection 801.353(f) for the reasons enumerated in subsection 801.353(f). Subsection 801.353(f) specifically provides the name and address of the client and the rabies vaccination status of the client's animal may be released to the public health authority for the enumerated purposes. You state the remaining information in Attachment C4 consists of veterinary records provided to the department during its investigation, and state the veterinarians provided the information to the department for a public health purpose. *See id.* § 801.353(f). Upon review, we find portions of the remaining information in Attachment C4 consist of the names and addresses of clients and the rabies vaccination statuses of the clients' animals that were provided to the department by veterinarians pursuant to subsection 801.353(f) of the Occupations Code. This information, which we have marked, is confidential pursuant to subsection 801.353(g) of the Occupations Code and must be withheld under section 552.101 of the Government Code. However, you do not explain how any portion of the remaining information at issue, which consists of veterinary examination and treatment invoices, consists of the name or address of a client or the rabies vaccination status provided to the department pursuant to subsection 801.353(f). Thus, we conclude you have failed to demonstrate the applicability of subsection 801.353(g) to the remaining information at issue. Accordingly, the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with subsection 801.353(g) of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 826.0211 of the Health and Safety Code, which states in relevant 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. You state the information you have marked Attachment C3 consists of rabies vaccination certificates that contain information that identifies or tends to identify an owner. In this instance, however, some of the information at issue relates to the second requestor's clients. 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 clients' 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 owners' identifying information within Attachment C3, 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, which 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.

Health & Safety Code § 826.0311(a). Section 826.0311 applies only to the actual pet registry; it does not apply 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 state the information you have marked Attachment C2 consists of "printouts from the city's dog and cat registry." In this instance, however, the information at issue

relates to the second requestor's clients. We note section 826.0311 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). Because section 826.0311 protects personal privacy, the second requestor has a special right of access to her clients' identifying information under section 552.023 of the Government Code. See Gov't Code § 552.023(a); ORD 481 at 4. However, the owners' identifying information within Attachment C2, which we have marked, must be withheld from the first requestor under section 552.101 of the Government Code in conjunction with section 826.0311 of the Health and Safety Code. We find none of the remaining information consists of the address, telephone number, or other personally identifying information of a pet owner. Thus, no portion of the remaining information may be withheld under section 552.101 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. 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). This office has also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. See Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). We note common-law privacy protects the interests of individuals. See Open Records Decision No. 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests). You claim the information you have marked Attachment C1, consisting of photographs of injuries suffered by a dog, is subject to common-law privacy. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note, however, one of the individuals whose privacy interests are at issue is a client 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 client, and the city 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 city must withhold from the first requestor the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, the city must withhold from the second requestor the information we have marked that does not pertain to her client under section 552.101 of the Government Code in

conjunction with common-law privacy. Upon review, we find you have not demonstrated how any portion of the remaining information is highly intimate or embarrassing to an individual and of no legitimate public concern. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

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. Gov't Code § 552.130(a)(1). Upon review, we find the city must withhold the driver's license information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We note section 552.136 protects privacy interests and the individual whose privacy interests are at issue is the client 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 client, and the city may not withhold this information from her under section 552.136. *See id.* § 552.023(a); ORD 481 at 4. However, the city must withhold from the first requestor the information we marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not excluded by subsection (c). Therefore, the city must withhold the personal e-mail address we marked under section 552.137 of the Government Code unless the owner affirmatively consents to its public disclosure.

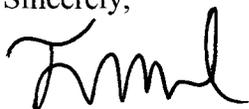
In summary, the information we have marked in Attachment C4 may be released only in accordance with section 801.353 of the Occupations Code. The city must withhold the information we have marked in Attachment C4 pursuant to section 552.101 of the Government Code in conjunction with subsection 801.353(g) of the Occupations Code. The city must withhold the information we have marked in Attachment C3 from the first requestor under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. The city must withhold the information we have marked in Attachment C2 from the first requestor under section 552.101 of the Government Code in conjunction with section 826.0311 of the Health and Safety Code. The city must withhold the information we have marked from the first requestor under section 552.101 of the Government Code in conjunction with common-law

privacy. The city must withhold the driver's license information we have marked under section 552.130 of the Government Code. The city must withhold from the first requestor the information we have marked under section 552.136 of the Government Code. The city must withhold the personal e-mail address we marked under section 552.137 of the Government Code unless the owner affirmatively consents to its public disclosure. The city 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 531317

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)