



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 10, 2016

Ms. Stacie S. White
Counsel for the Town of Flower Mound
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2016-03218

Dear Ms. White:

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# 597740.

The Town of Flower Mound (the "town"), which you represent, received a request for all records pertaining to police being called to a specified address during a specified time period. You state you will redact certain information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.¹ Further, you state you will redact certain information pursuant to Open Records Decision No. 684 (2009).² You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the

¹Section 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* 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 id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

²Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision. *See* ORD 684.

Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

The town asserts the dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure.⁴ *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. We note common-law privacy protects personal privacy. Thus, the requestor has a right of access to her information under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at (4) (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the date of birth belonging to the requestor, the town must withhold all public citizens’ dates of birth under section 552.101 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175(b). Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Some of the remaining information pertains to an individual whose information may be subject to section 552.1175. Thus, to the extent the information you indicated pertains to an individual whose information is subject to section 552.1175(a), and the individual elects to

³Although you also raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise for information not held by the town in an employment context.

⁴Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).

restrict access to this information in accordance with section 552.1175(b), the town must withhold this information under section 552.1175 of the Government Code. If the individual whose information you indicated is not subject to section 552.1175(a) or no election is made, the town may not withhold this information under section 552.1175 of the Government Code.

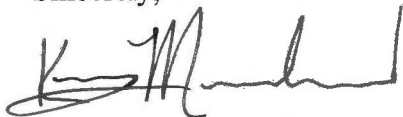
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a). Accordingly, the town must withhold the motor vehicle record information you indicated and we indicated under section 552.130 of the Government Code.

In summary, with the exception of the date of birth belonging to the requestor, the town must withhold all public citizens' dates of birth under section 552.101 of the Government Code. To the extent the information you indicated pertains to an individual whose information is subject to section 552.1175(a) of the Government Code, and the individual elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the town must withhold the information you indicated under section 552.1175 of the Government Code. The town must withhold the motor vehicle record information you indicated and we indicated under section 552.130 of the Government Code. The town 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 597740

Enc. Submitted documents

c: Requestor
(w/o enclosures)