



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 8, 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

OR2016-13106

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# 613326.

The Town of Flower Mound (the "town"), which you represent, received a request for a specified incident report involving the requestor's client. You state you will release some information. You state you will redact social security numbers pursuant to section 552.147(b) of the Government Code and certain information pursuant to the previous determination issued in Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations

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<sup>1</sup>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 requesting a decision from this office under the Act. Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See id.* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. However, section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See* Gov’t Code § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in criminal justice system). We also note the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). Accordingly, the town must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter.<sup>2</sup> However, the remaining information does not constitute confidential CHRI; thus, the town may not withhold the remaining information under section 552.101 in conjunction with section 411.083.

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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history).

Further, 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. *Indus. Found.*, 540 S.W.2d 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*

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<sup>2</sup>We note the requestor can obtain her client’s CHRI from DPS. Gov’t Code § 411.083(b)(3).

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.<sup>3</sup> *Texas 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 the requestor may be the authorized representative of one of the individuals whose privacy interests are at issue; thus, he may have a right of access to this individual's private information pursuant to section 552.023 of the Government Code. *See Gov't Code* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Because we are unable to determine whether the requestor is the authorized representative of one of the individuals whose privacy interests are at issue, we must rule conditionally. If the requestor is acting as the authorized representative of the individual at issue, then the town may not withhold the information we have marked under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the individual at issue, then the town must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. In either instance, the town must withhold the date of birth you have indicated under section 552.101 in conjunction with common-law privacy.

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 Gov't Code* § 552.130. Upon review, we find the responsive information contains motor vehicle record information subject to section 552.130. However, we note section 552.130 is designed to protect the privacy of individuals and the requestor may be acting as the authorized representative of the owner of one of the vehicles at issue. Accordingly, the requestor may have a right of access to this individual's motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, we must rule conditionally. If the requestor is acting as the authorized representative of the owner of one of the vehicles at issue, the town may not withhold the motor vehicle record information pertaining to this individual, which we have marked and indicated, under section 552.130 and must release this information to the requestor. If, however, the requestor is not acting as the authorized representative of the owner of one of the vehicles at issue, the town must withhold the motor vehicle record information pertaining to this individual, which we have marked and indicated, under

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<sup>3</sup>Section 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).

section 552.130. In either instance, the town must withhold the motor vehicle record information you have indicated and all images of license plates not pertaining to the individual for whom the requestor may be acting as the authorized representative within the submitted video recordings under section 552.130.

In summary, the town must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. If the requestor is not acting as the authorized representative of the individual at issue, then the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the date of birth you have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the owner of one of the vehicles at issue, the town must withhold the motor vehicle record information pertaining to this individual, which we have marked and indicated, under section 552.130 of the Government Code. The town must withhold the motor vehicle record information you have indicated and all images of license plates not pertaining to the individual for whom the requestor may be acting as the authorized representative within the submitted video recordings under section 552.130 of the Government Code. The remaining information must be released.<sup>4</sup>

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](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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/akg

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<sup>4</sup>We note the requestor has a right of access beyond that of the general public to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4.

Ref: ID# 613326

Enc. Submitted documents

c: Requestor  
(w/o enclosures)