



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 17, 2017

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

OR2017-08017

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# 653520 (TOFM PIR# 059-17).

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified incident. You state the town will withhold social security numbers pursuant to section 552.147(b) of the Government Code.¹ You also state the town will withhold certain information pursuant to Open Records Decision No. 684 (2009).² You claim some of 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.

¹Section 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* Gov't Code § 552.147(b).

²Open 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.

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. Section 552.101 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). The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the town must withhold all public citizens’ dates of birth, the information you marked, and the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

We note a portion of the remaining information may be subject to section 552.1175 of the Government Code.³ Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.1175(a)(1), (b). A portion of the remaining information, which we have indicated, relates to a licensed peace officer of the town's police department but the information is not held by the town in an employment capacity. Accordingly, to the extent the officer at issue elects to restrict access to the information we have indicated in accordance with section 552.1175(b), the town must withhold the information we have indicated under section 552.1175 of the Government Code. Conversely, if the officer at issue does not elect to restrict access to the information in accordance with section 552.1175(b), the information we have indicated may not be withheld under section 552.1175.

You state you have marked some motor vehicle record information for redaction pursuant to section 552.130(c) of the Government Code.⁴ We note the remaining information contains additional motor vehicle record information. 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a). Accordingly, the town must withhold the motor vehicle record information you have marked, in addition to the discernable license plates within the submitted video recordings, under section 552.130 of the Government Code.

In summary, the town must withhold all public citizens' dates of birth, the information you marked, and the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the officer at issue elects to restrict access to the information we have indicated in accordance with section 552.1175(b), the town must withhold the information we have indicated under section 552.1175 of the Government Code. The town must withhold the motor vehicle record information you have marked, in addition to the discernable license plates within the submitted video recordings, under section 552.130 of the Government Code. The town must release the remaining information.

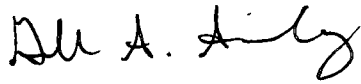
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁴Section 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).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/som

Ref: ID# 653520

Enc. Submitted documents

c: Requestor
(w/o enclosures)