



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 31, 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 76107-4654

OR2017-19994

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# 673688.

The Flower Mound Police Department (the "department"), which you represent, received a request for information pertaining to a named individual and three specified offense reports. You state the department will redact social security numbers under section 552.147(b) of the Government Code and information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim portions of the submitted information are 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.

Initially, we note you have not submitted any information responsive to the request for information pertaining to one of the specified offenses. To the extent any information responsive to this portion of the request existed on the date the department received the request, we assume the department has released it. If the department has not released any

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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 the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("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 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 ch. 411 subch. F. 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 F, or subchapter E-1, of the Government Code. *See* Gov't Code § 411.083. 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 obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We note, however, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for purposes of section 552.101. *See id.* §411.081(b). We also note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). We further note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. You assert section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code for portions of the submitted information. Upon review, we find the information we marked consists of CHRI the department must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, we find you have failed to demonstrate the remaining information at issue consists of confidential CHRI. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code on this basis.

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). We note the requestor has a right of access to his client's private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we marked for release, the department must withhold the information you marked, the additional information we marked to withhold, and, with the exception of the date of birth belonging to the requestor's client, all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, no portion of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

You state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>2</sup> Section 552.130 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. We note, section 552.130 protects personal privacy. Thus, the requestor has a right of access to his client's motor vehicle record information under section 552.023 and may not be withheld from him. *See id.* § 552.023(a); ORD 481 at 4. Further, we note the remaining information contains additional information subject to section 552.130. Therefore, the department must withhold the information you marked, and the additional information we marked to withhold, under section 552.130 of the Government Code; however, the motor vehicle record information belonging to the requestor's client must be released to him.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government

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<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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).

Code and federal law. With the exception of the information we marked for release, the department must withhold the information you marked, the additional information we marked to withhold, and, with the exception of the date of birth belonging to the requestor's client, all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you marked, and the additional information we marked to withhold, under section 552.130 of the Government Code; however, the motor vehicle record information belonging to the requestor's client must be released to him. The department must release the remaining information.<sup>3</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,



Emily Kunst  
Attorney  
Open Records Division

EK/eb

Ref: ID# 673688

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023(a). Further, we note the requestor can obtain his client's CHRI from DPS. *Id.* § 411.083(b)(3).