



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 14, 2017

Ms. Stacie S. White
Counsel for the Town of Flower Mound
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2017-21061

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# 675477 (Ref. No. 527-17).

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a named individual and the requestor during a specified time period. You state you will release some information to the requestor. You state you will redact social security numbers under section 552.147(b) of the Government Code and information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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

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). 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.

Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find the present request requires, in part, the town to compile unspecified law enforcement records concerning the named individual. We find this part of the request implicates the named individual's right to privacy. However, we note the requestor also seeks information involving herself. This part of the request seeks specified records involving the requestor and does not implicate the other named individual's right to privacy. Additionally, the requestor has a special right of access to her own information that would ordinarily be withheld to protect her privacy interests. *See Gov't Code § 552.023(a)-(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). Therefore, with the exception of law enforcement records involving the requestor, to the extent the town maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the town must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, the town has submitted law enforcement records that either involve the requestor or do not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and the town may not withhold it under section 552.101 in conjunction with common-law privacy on that basis. Accordingly, we will address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Upon review, we find the information we have marked was used or developed in an investigation under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). We note the requestor is a parent of the child victim listed in the submitted information, but the requestor is alleged to have committed the alleged abuse or neglect. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *Id.* § 261.201(k). Therefore, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

Section 552.101 of the Government Code also encompasses 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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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, 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). Upon review, we find the information we have marked consists of CHRI which the town must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.³ However, we find you have failed to demonstrate the remaining information consists of confidential CHRI. Therefore, the town may not withhold any portion of the remaining information under section 552.101 of the Government Code on this basis.

You state you will redact certain motor vehicle record information under section 552.130(c) of the Government Code.⁴ 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 § 52.130. We note, because section 552.130 protects privacy interests, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, the town must withhold the motor vehicle

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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).

record information you have marked, and the additional motor vehicle record information we have marked and indicated, under section 552.130 of the Government Code.⁵

As noted above, section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Indus. Found*, 540 S.W.2d 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 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.). We note a requestor has a right of access to her child's and her own date of birth. *See* Gov't Code § 552.023(b); ORD 481 at 4. Upon review, we conclude some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the town must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of law enforcement records involving the requestor, to the extent the town maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the town must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The town must withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked and indicated, under section 552.130 of the Government Code. The town must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The town must release the remaining information.

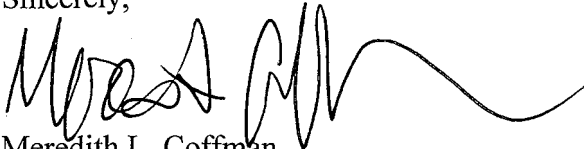
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

[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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 675477

Enc. Submitted documents

c: Requestor
(w/o enclosures)