



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 7, 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

OR2017-25425

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# 683384.

The Town of Flower Mound (the "town"), which you represent, received a request for all records for a specified time period pertaining to: a specified address, three named individuals, and a specified case. You state you will redact information under section 552.130(c) of the Government Code.<sup>1</sup> You also state you will redact information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> 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 Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which

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<sup>1</sup>We note 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).

<sup>2</sup>Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the present request requires the town to compile unspecified law enforcement records concerning the three named individuals. However, you have submitted documents relating to the case specified by the requestor. Because the requestor specifically asks for this information, it is not part of a compilation of an individual's criminal history and may not be withheld on that basis. Therefore, this information is not confidential under common-law privacy, and the town may not withhold it under section 552.101 of the Government Code on that ground. Additionally, we note the remaining information does not depict the named individuals as suspects, arrestees, or criminal defendants. This information does not implicate the privacy interests of the individuals and may not be withheld as a compilation of criminal history under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, we will address your argument against disclosure of the submitted information.

As stated above, section 552.101 of the Government of the Code encompasses the doctrine of common-law privacy, which is subject to the two-part test described above. Types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation. Indus. Found.*, 540 S.W.2d at 683. 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.). Accordingly, the town must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the town has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the town may not withhold any of the remaining information 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/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,

A handwritten signature in cursive script that reads "Ashley Crutchfield".

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/sb

Ref: ID# 683384

Enc. Submitted documents

c: Requestor  
(w/o enclosures)