



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 16, 2018

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

OR2018-03831

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# 696087.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified incident. You state you have released some information. You state the town will redact motor vehicle record information under section 552.130(c) of the Government Code, social security numbers under to section 552.147(b) of the Government Code, and certain information pursuant to Open Records Decision No. 684 (2009).¹ You claim some of 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.

¹Section 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. 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). 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 under the Act. *Id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision.

You state, and we agree, a portion of the submitted audio recording, which we have noted, is not responsive to the instant request for information because it does not pertain to the specified incident. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request. The town states it does not possess the technological capability to redact information from audio files. However, because the town had the ability to copy the submitted audio recording in order to submit it for our review, we believe the town has the capability to produce a copy of only the responsive portions of the audio recording. As we are able to make this determination, we do not address your argument under section 552.101 of the Government Code against the disclosure of the non-responsive information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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 the information at issue contains a date of birth pertaining to one of the requestor’s clients. The requestor has a right of access to her client’s date of birth, and the town may not withhold this information from the requestor on the basis of common-law privacy. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the town must withhold the information we indicated and, with the exception of the date of birth pertaining 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, we find no portion of the

remaining responsive information is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the town may not withhold any of the remaining responsive information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. *See Open Records Decision No. 208* at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279* at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582* at 2 (1990), 515 at 4 (1988). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. Additionally, the privilege is not intended to protect the identities of public officials and employees who have a duty to report violations of the law. Because a public employee acts within the scope of his employment when filing a complaint, the informer's privilege does not protect the public employee's identity. *Cf. United States v. St. Regis Paper Co.*, 328 F. Supp. 660,665 (W.D. Wis. 1971) (concluding public officer may not claim informer's reward for service it is his or her official duty to perform).

We understand you to contend the remaining responsive information identifies a complainant who reported violations of law to the town. However, we find you failed to demonstrate the remaining information at issue consists of the identifying information of an individual who reported a criminal violation to the town for purposes of the informer's privilege. Accordingly, the town may not withhold the remaining responsive information under section 552.101 on that basis.

As previously noted, you state the town will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code. 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. We note the purpose of section 552.130 is to protect the privacy interests of individuals. Accordingly, the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code, and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Upon review, we note the submitted video recording contains additional information subject to section

552.130. Thus, with the exception of the information pertaining to the requestor's client, which we marked for release, the town must withhold the motor vehicle record information you marked and we indicated under section 552.130 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.² Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Upon review, we find some of the remaining responsive information pertains to peace officers and is not held by the town in an employment capacity. Accordingly, to the extent the information we indicated pertains to currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), the town must withhold the information we indicated under section 552.1175 of the Government Code. If the individuals whose information we indicated are no longer licensed peace officers or no election is made, the town may not withhold this information under section 552.1175 of the Government Code.

In summary, the town must withhold the information we indicated and, with the exception of the date of birth pertaining 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. With the exception of the requestor's client's information, which we marked for release, the town must withhold the motor vehicle record information you marked and we indicated under section 552.130 of the Government Code. To the extent the information we indicated pertains to currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), the town must withhold the information we indicated under section 552.1175 of the Government Code. The town must release the remaining responsive 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

²The 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).

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 "Kaelan A. Henze". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/gw

Ref: ID# 696087

Enc. Submitted documents

c: Requestor
(w/o enclosures)