



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 16, 2019

Ms. Alicia K. Kreh  
Counsel for the Town of Flower Mound  
Taylor, Olson, Adkins, Sralla & Elam, L. L. P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2019-10165

Dear Ms. Kreh:

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# 767491.

The Town of Flower Mound (the "town"), which you represent, received a request for all call reports involving a specified address. You inform us you will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision 684 (2009).<sup>1</sup> You claim portions of the submitted information are 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long

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<sup>1</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). 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 certain categories of information without the necessity of requesting an attorney general opinion.

been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). 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, provided the subject of the information does not already know the informer's identity. 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). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state the information you have marked consists of the identifying information of a complainant who reported possible violations of law to the town's police department. We have no indication the subject of the complaint knows the identity of the complainant. Based upon your representations and our review, we find you have demonstrated the applicability of the common-law informer's privilege to the information at issue. Therefore, the town may withhold the complainant's identifying information, which you have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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, however, the requestor has a right of access to his own date of birth, and this information may not be withheld under common-law privacy. See Gov't Code § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Furthermore, we note one of the dates of birth at issue relates to an individual who have been de-identified and whose privacy interests are thus protected. Accordingly, the town must withhold the identifiable public citizens' dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the town may withhold the complainant's identifying information, which you have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and must withhold the identifiable public citizens' dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The town must release the remaining information to this requestor.<sup>2</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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/jxd

Ref: ID# 767491

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor has a right of access to some of the information being released under section 552.023 of the Government Code. See Gov't Code § 552.023; ORD 481 at 4. Accordingly, if the town receives another request for this same information from a different requestor, the town must again seek a ruling from this office.