



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 12, 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 76107-4654

OR2019-22200

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# 780039.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified arrest. You state you will redact information under section 552.130(c) of the Government Code and pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> 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.

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. You contend portions of the submitted information are confidential under section 552.101 in conjunction with section 724.018 of the Transportation Code, which provides, "[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to

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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). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision.

the person or the person's attorney." Transp. Code § 724.018. We note the statutory confidentiality under section 552.101 requires express language making information confidential or stating information shall not be released to the public. *See* Open Records Decision No. 478 at 2 (1987) (addressing statutory predecessor); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). No language in section 724.018 makes information encompassed by the statute confidential or prohibits the release of such information to the public. Thus, section 724.018 is not a statutory confidentiality provision. We, therefore, conclude the town may not withhold any portion of the submitted information under section 552.101 in conjunction with section 724.018.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the 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) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-127. Upon review, we find the information we marked consists of confidential CHRI. Accordingly, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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. 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. *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.). Upon review, we find the information we marked and indicated and the public citizen's date of birth in the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the town must withhold the information we marked and indicated and the public citizen's date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

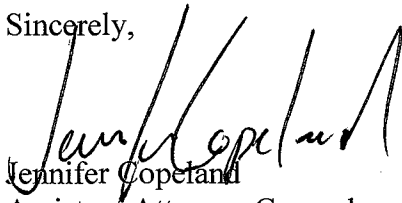
The town has failed to demonstrate, however, the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the town may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The town must withhold the information we marked and indicated and the public citizen's date of birth 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/be

Ref: ID# 780039

Enc. Submitted documents

c: Requestor  
(w/o enclosures)