



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2019

Ms. Alicia K. Kreh
Counsel for Town of Flower Mound
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6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2019-30889

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# 794886.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a named individual, including information pertaining to a specified incident. You state the town will redact information pursuant to Open Records Decision No. 684 (2009).¹ You also state you will withhold certain information pursuant to section 552.147(b) of the Government Code.² You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions 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

¹ 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.

² Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See Gov't Code* § 552.147(b).

decision.” Gov’t Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(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.

Fam. Code § 261.201(a). You state, and we agree, the information at issue relates to an investigation of alleged or suspected child abuse or neglect conducted by the town’s police department (the “department”). *See id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to section 261.201 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the town must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Gov’t Code § 411.083(a). 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 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F 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

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue. Further, although the requestor is a representative of the Texas Health and Human Services Commission, he does not otherwise indicate she has a right of access to this information under state or federal law. *See* Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).

CHRI except to another criminal justice agency for a criminal justice purpose. *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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter E-1 or subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, some of the information at issue consists of CHRI that is confidential under section 411.083. Therefore, except for the information marked for release, the town must generally withhold the information you marked under section 552.101 of the Government Code in conjunction with 411.083 of the Government Code. However, we find you have failed to demonstrate the remaining information at issue consists of confidential CHRI. Therefore, the town may not withhold any portion of the information we have marked for release under section 552.101 of the Government Code on that basis.

However, we note, the requestor is a representative of the Texas Health and Human Services Commission (the "commission"), and thus may have a right of access to the information at issue. Section 411.122(a) of the Government Code provides, in part:

[A]n agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [DPS] [CHRI] maintained by [DPS] that relates to a person who:

- (1) is an applicant for a license from the agency;
- (2) is the holder of a license from the agency; or
- (3) requests a determination of eligibility for a license from the agency.

Id. § 411.122(a). We note the commission is subject to section 411.122(a). *See id.* § 411.122(d)(8). In addition, section 411.087(a) of the Government Code provides, in pertinent part, the following:

[A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS] CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as “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.” *See id.* § 411.082(2). In this instance, the information contains CHRI pertaining to the individual named in the request. However, the requestor does not indicate, and we are not otherwise able to determine, whether the individual named in the request is an applicant for a license from the commission, is the holder of a license from the commission, or is requesting a determination of eligibility for a license from the commission. Thus, we must rule in the alternative. If the individual named in the request is an individual described by section 411.122 of the Government Code, then the requestor has a right of access to the CHRI and the town may not withhold this information from him under section 552.101 of the Government Code in conjunction with section 411.083. *See* ORD No. 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the individual named in the request is not an individual described by section 411.122 of the Government Code, then the requestor does not have a right of access to the named individual’s CHRI and the town need not release it. In that instance, with the exception of the information we marked for release, the town must withhold the information you 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 information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

The remaining information includes a CR-3 accident report. In this instance, the requestor is not a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b), and the town must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the town to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the requestor has a right of access to the redacted accident report. Thus, the town must release the redacted accident report to the requestor pursuant to section 550.065(c-1).

Section 552.101 of the Government Code 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 to be intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* 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). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate and embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 523 (1989) (common-law privacy protects credit report, financial statements, and other personal financial information). The Third 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.).

Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, except for the information marked for release, the town must withhold the information we marked and the information you marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the town has failed to demonstrate the information we marked for release is highly intimate or embarrassing and of no legitimate public interest. Thus, the town may not withhold the information we marked for release under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Accordingly, the town must withhold the information it marked and indicated and the additional information we marked and indicated under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”⁴ *Id.* § 552.136(b);

⁴The town states it will redact information pursuant to Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold certain categories of information without requesting an attorney general decision. However, the Texas Legislature amended section 552.136 to allow a governmental body to redact information described in section 552.136(b) without a ruling from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor of his right to appeal the redactions in accordance with section 552.136(e). *See id.* § 552.136(e).

see id. § 552.136(a) (defining “access device”). Upon review, we find the town must withhold the insurance policy numbers you marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).⁵ *See id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the town must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the town must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the individual named in the request is not an individual described by section 411.122 of the Government Code, then with the exception of the information we marked for release, the town must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The town must withhold the submitted accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, but must release the redacted accident report to the requestor pursuant to section 550.065(c-1) of the Transportation Code. Except for the information marked for release, the town must withhold the information we marked and the information you marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the motor vehicle information it marked and indicated and the additional information we marked and indicated under section 552.130 of the Government Code. The town must withhold the insurance policy numbers you marked under section 552.136 of the Government Code. The town must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. 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.

Open Records Decision No. 684 does not permit the requestor to appeal such redactions. Thus, the statutory amendments to section 552.136 of the Government Code supercedes Open Records Decision No. 684, and a governmental body may redact information subject to section 552.136(b) in accordance with section 552.136(c), not Open Records Decision No. 684.

⁵ The 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).

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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 794886.

Enc. Submitted documents

c: Requestor
(w/o enclosures)