



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 9, 2020

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

OR2020-15705

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# 833167.

The Town of Flower Mound (the "town"), which you represent, received a request for a specified incident report. You state you will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision No. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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).

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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 the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See 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 decision.

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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). We note the requestor has a right of access to his own date of birth, and this information may not be withheld from him under common-law privacy. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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 himself). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, with the exception of the information we have marked for release, the town must withhold the information you have marked, and the additional information we have marked to withhold, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the town may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

As noted above, you state you will redact information pursuant to section 552.130(c) of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). We note you have marked information that does not consist of motor vehicle record information for purposes of section 552.130. Accordingly, with the exception of the information we have marked for release, the town must withhold the information you have marked under section 552.130 of the Government Code. However, we find you have failed to demonstrate the remaining information at issue is subject to section 552.130. Thus, the town may not withhold the remaining information at issue on that basis.

In summary, with the exception of the information we have marked for release, the town must withhold the information you have marked, and the additional information we have marked to withhold, under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the town must withhold the information you have marked under section 552.130 of the Government Code. The town must release the remaining information to this requestor.<sup>2</sup>

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<sup>2</sup> We note the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the town receives another request for this information from a different requestor, the town must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/jlbm

Ref: ID# 833167

Enc. Submitted documents

c: Requestor  
(w/o enclosures)