



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 15, 2020

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

OR2020-16074

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# 835208.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified incident. The town states it will withhold information pursuant to section 552.147(b) of the Government Code.¹ The town claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions 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. Section 552.101 of the Government Code encompasses section 560.003 of the Government Code. Section 560.003 provides that "[a] biometric identifier in the

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including fingerprints under section 552.101 in conjunction with section 560.003 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office. 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. *See* Gov't Code § 552.147(b).

possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the marked fingerprint information in this instance. Therefore, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing fact, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 683. 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 the dates of birth you marked and the additional dates of birth we marked satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the town must withhold the dates of birth you marked and the additional dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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. The town must withhold the motor vehicle record information it has marked, as well as the information we have marked, under section 552.130 of the Government Code.

In summary, the town must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (2) the dates of birth of public citizens you have marked and those we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the information marked under section 552.130 of the Government Code. 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,

Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/mo

Ref: ID# 835208

Enc. Submitted documents

c: Requestor
(w/o enclosures)