



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 6, 2020

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

OR2020-19618

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# 838527.

The Flower Mound Police Department (the "department"), which you represent, received a request for information related to a named individual. 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 "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. *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 the requestor provided a signed authorization from the named individual and, thus, has a right of access to the named individual's date of birth. *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 himself). Upon review, we conclude the department must withhold the date of birth you have marked not belonging to the named individual under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the department will withhold certain information you have marked pursuant to section 552.130(c) of the Government Code.<sup>1</sup> Section 552.130 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. We note section 552.130 protects personal privacy. In this instance, the requestor has provided a signed authorization from the named individual and may have a right of access to some of the motor vehicle record information at issue under section 552.023 of the Government Code. However, because we are unable to determine whether the information at issue belongs to the named individual, we must rule conditionally. To the extent the motor vehicle record information you have marked belongs to the named individual, the requestor has a right of access under section 552.023 to this information, and the department may not withhold such information under section 552.130 from the requestor. With the exception of the information we have marked for release, to the extent the motor vehicle record information you have marked does not belong to the named individual, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. However, we find section 552.130 is not applicable to the information we have marked for release. Therefore, the department may not withhold the information we have marked for release on that ground.

In summary, the department must withhold the date of birth you have marked not belonging to the named individual 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, to the extent the motor vehicle record information you have marked does not belong to the named individual, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

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

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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).

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/jxd

Ref: ID# 838527

Enc. Submitted documents

c: Requestor  
(w/o enclosures)