



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 24, 2020

Ms. Stacie S. White
Counsel for Town of Flower Mound
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2020-24084

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# 845624.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified incident involving a named individual. You state you will withhold certain information pursuant to section 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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 intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The Third Court

¹ 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* Gov't Code § 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.

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.). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987). However, this office has also found the public has a legitimate public interest in the details of a crime. *See Open Records Decision No. 400* at 4 (1983). *See generally Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))).

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 marked for release, the town must withhold the information you marked and the additional information we marked 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 in conjunction with common-law privacy.

You state you will redact information under section 552.130(c) of the Government Code.² 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. Accordingly, with the exception of the information we marked for release, the town must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code. However, we find the information we marked for release does not consist of motor vehicle record information subject to section 552.130 of the Government Code. Therefore, the town may not withhold the information we marked for release under section 552.130.

In summary, with the exception of the information we marked for release, the town must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the town must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code. The town must release the remaining information.³

² Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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).

³ Because the requestor has a special right of access to some of the information being released, the town must again seek a decision from this office if it receives another request for the same information from another requestor.

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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/be

Ref: ID# 845624

Enc. Submitted documents

c: Requestor
(w/o enclosures)