



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 11, 2020

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

OR2020-31078

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# 858553.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a named individual. You state you will redact motor vehicle record information under section 552.130(c) of the Government Code, social security numbers under section 552.147(b) of the Government Code, and information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected,

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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 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). 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. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information, including e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information;  
or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the officer's TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released to the requestor.

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 encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

*Id.* § 1701.454. Upon review, we find a portion of the information was submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Accordingly, the

town must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.<sup>2</sup>

Section 552.101 also encompasses information protected by chapter 411 of the Government Code. CHRI generated by the National Crime Information Center (the “NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “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.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See id.* § 411.083(a). 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 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Upon review, we find the information we marked consists of CHRI the town must withhold under section 552.101 in conjunction with section 411.083 and federal law.<sup>3</sup>

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the town must withhold the date of birth we marked under section 552.102(a) of the Government Code.<sup>4</sup>

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

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>4</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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. 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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 also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

Upon review, we conclude portions of the remaining information meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the town may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, the town must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family

member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the remaining information pertains to an individual who was a licensed peace officer of another law enforcement agency at the time the information at issue was created. However, we are unable to determine from the information provided if the individual at issue is currently a licensed peace officer. Thus, we must rule conditionally. Accordingly, to the extent the information at issue, which we have marked, relates to an individual who is currently licensed as a peace officer and who elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the town must withhold the information we marked under section 552.1175 of the Government Code. Conversely, if the individual whose information is at issue is not currently licensed as a peace officer or does not elect to restrict access to his information in accordance with section 552.1175(b), the information we marked may not be withheld under section 552.1175 of the Government Code.

Section 552.136(b) of the Government Code states that "[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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Therefore, the town must withhold the insurance policy number we marked under section 552.136 of the Government Code.

In summary, the TCOLE identification number is not subject to the Act and need not be released. The town must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The town must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The town must withhold the date of birth we marked under section 552.102(a) of the Government Code. The town must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. To the extent the information at issue, which we have marked, relates to an individual who is currently licensed as a peace officer and who elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the town must withhold the information we marked under section 552.1175 of the Government Code. The town must withhold the insurance policy number we marked under section 552.136 of the Government Code. The remaining information must be released.

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,

Melanie Villars  
Assistant Attorney General  
Open Records Division

MJV/jm

Ref: ID# 858553

Enc. Submitted documents

c: Requestor  
(w/o enclosures)