



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2022

Ms. Lindsey M. Hale
Counsel for the Town of Flower Mound
Taylor, Olson, Adkins, Sralla, & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2022-06631

Dear Ms. Hale:

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# 934791 (ORR No. PD684-21).

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified incident.¹ You state you will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and certain information pursuant to Open Records Decision No. 684 (2009).² You claim some of 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.

¹ You state the town sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

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 redact 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 without the necessity of requesting an attorney general decision.

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 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. 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 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 information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor has a right of access to his own information pursuant to section 552.023 of the Government Code and it may not be withheld from him on the basis of common-law privacy. *See* Gov’t Code § 552.023(a) (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 individuals request information concerning themselves). Nevertheless, the town must withhold the public citizen’s dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

As noted above, you state you will redact certain information pursuant to Open Records Decision No. 684. Section 552.136 of the Government Code provides, “[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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We note section 552.136 protects personal privacy. Accordingly, the requestor has a right of access to his own information under section 552.023 of the Government Code and it may not be withheld from him under section 552.136. *See id.* § 552.023(a); ORD 481 at 4. Upon review, we find the information the town seeks to withhold on this basis consists of information belonging to the requestor. Accordingly, the town may not withhold the information you marked under section 552.136 of the Government Code.

In summary, the town must withhold the public citizen’s dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/ba

Ref: ID# 934791

Enc. Submitted documents

c: Requestor
(w/o enclosures)