



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 31, 2022

Ms. Marie N. Johnson  
Counsel for the Town of Addison  
Messer, Fort & McDonald, PLLC  
6371 Preston Road, Suite 200  
Frisco, Texas 75034

OR2022-09517

Dear Ms. Johnson:

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# 939593 (ORR# 9017).

The Town of Addison (the "town"), which you represent, received a request for information pertaining to a specified incident involving named individuals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the procedural obligations of the town under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the town received the request for information on January 1, 2022. We note January 1, 2022, was a Saturday; thus, the town is deemed to have received the request for information on January 3, 2022. You state the town was closed on January 17, 2022. Accordingly, the town's ten-business-day deadline was January 18, 2022. However, you did not request a ruling from this office until January 19, 2022. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, we conclude the town failed to comply with the procedural requirements mandated by section 552.301(b) in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The town claims sections 552.101 and 552.108 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the submitted information. Additionally, because sections 552.130 and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the submitted information.<sup>1</sup> However, we find you have failed to establish a compelling reason to address your remaining exception.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Some of the submitted information, which you have marked, was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the town. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. The town does not indicate it has adopted a rule that governs the release of this type of information and, therefore, we assume no such regulation exists. Given that assumption, we conclude the town must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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 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 some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the town must withhold the information 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. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); ORD No. 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Accordingly, to the extent the marked motor vehicle record information does not belong to the requestor, the town must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code* § 552.137(a)-(c). We note the requestor has a right to his own e-mail address under section 552.137(b). *Id.* § 552.137(b). The e-mail address at issue is not excluded by subsection (c). Therefore, the town must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the town must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The town must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the marked motor vehicle record information does not belong to the requestor, the town must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The town must withhold the personal e-mail address we have marked under section 552.137 of the

Government Code, unless the owner affirmatively consents to its public disclosure. The remaining information must be released.<sup>2</sup>

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,

Colin Henry  
Attorney  
Open Records Division

CEH/be

Ref: ID# 939593

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD No. 481 at 4. Thus, if the town receives another request for the same information from a different requestor, the town must again seek a decision from this office. We note the remaining information includes a social security number. Section 552.147(b) of the Government Code authorizes a government 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. Gov't Code § 552.147(b).