



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 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

OR2022-21457

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# 961884.

The Town of Flower Mound (the "town"), which you represent, received two requests from the same requestor for information pertaining to a specified incident. You state you will release some information. 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).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1085 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

¹ 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). 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. *See* ORD 684.

² We note you did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101 and 552.1085 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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 of the Government Code 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 682. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 638. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information the town marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the town must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1085 of the Government Code provides, in relevant part, the following:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov’t Code § 552.1085(c). For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person’s genitalia.” *See id.* § 552.1085(a)(6). Upon review, we find none of the remaining information consists of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the town may not withhold the remaining photographs under section 552.1085(c) of the Government Code.

In summary, the town must withhold the information it 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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/eb

Ref: ID# 961884

Enc. Submitted documents

c: Requestor
(w/o enclosures)