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ATTORNEY GENERAL OF TEXAS

December 1, 2022

Ms. Cara Leahy White
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Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2022-37134

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# 988124 (ORR# 531-22).

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a named individual. The town claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions 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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). 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.). The requestor has a right of access to the named individual’s private information, including his date of birth, pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is 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 submitted dates of birth that do not pertain to the named individual 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. The town must generally withhold the motor vehicle record information it has marked, as well as the information we have marked, under section 552.130. However, we note some of this information pertains to the named individual. Because section 552.130 protects personal privacy, the requestor has a right of access to the named individual’s motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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 individual requests information concerning herself). Therefore, the town must withhold the information marked under section 552.130 of the Government Code, unless the requestor has a right of the access to it pursuant to section 552.023 of the Government Code.

In summary, the town must withhold the submitted dates of birth that do not pertain to the named individual under section 552.101 of the Government Code in conjunction with common-law privacy. The town must also withhold the information marked under section 552.130 of the Government Code, unless the requestor has a right of the access to it pursuant to section 552.023 of the Government Code. 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/pt

Ref: ID# 988124

Enc. Submitted documents

c: Requestor
(w/o enclosures)