



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2014

Ms. Rachel L. Lindsay
Counsel for the Town of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-00786

Dear Ms. Lindsay:

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# 510887.

The Town of Flower Mound (the "town"), which you represent, received a request for information concerning a specified case. 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.

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. Section 552.101 encompasses constitutional privacy. The constitutional right to privacy protects two types of interests. *See* Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. *Id.* The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing

Fadjo v. Coon, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than under the common-law right to privacy; the material must concern the “most intimate aspects of human affairs.” *See id.* at 5 (citing *Ramie*, 765 F.2d at 492). Upon review, we find the information we marked is protected under constitutional privacy. Accordingly, the town must withhold that information under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.101 of the Government Code also encompasses 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. *See id.* at 681–82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). You have not demonstrated this is a situation in which the victim’s identity must be withheld. Furthermore, upon review, we find the remaining information is not highly intimate or embarrassing. Accordingly, the town may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country.¹ Gov’t Code § 552.130(a). Accordingly, the town must withhold the driver’s license information we marked under section 552.130 of the Government Code.²

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)–(c). Accordingly, the town must withhold the

¹The 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).

²Section 552.130 of the Government Code authorizes a governmental body to redact certain motor vehicle record information without requesting a ruling from this office, but the governmental body must provide notice to the requestor. *See* Gov’t Code § 552.130 (c)–(e).

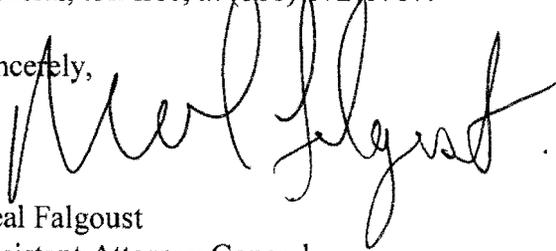
e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release.³

In summary, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with constitutional privacy, and the information we marked under section 552.130 of the Government Code. The town must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release. 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/som

Ref: ID# 510887

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies permitting them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137, without requesting a decision from this office.