



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 24, 2015

Ms. Stacie S. White  
Counsel for the Town of Flower Mound  
Taylor Olson Adkins Sralla Ellam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2015-20067

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# 583128.

The Town of Flower Mound (the "town"), which you represent, received two requests from the same requestor for information pertaining to a specified motor vehicle accident, namely (1) a named individual's drug and alcohol test results; (2) reports pertaining to the accident; (3) maintenance records, brake test results, and the current inspection report for a specified vehicle; and (4) the named individual's cell phone records. You state the town 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 other information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> 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.

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<sup>1</sup>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. *Id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general opinion. *See* ORD 684.

Initially, we note you have only submitted the named individual's drug and alcohol test results. Thus, to the extent additional responsive information existed and was maintained by the town on the date the town received the request for information, we presume the town has released it. If not, the town must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We understand you to assert the submitted information is confidential under common-law privacy on the basis of Open Records Decision No. 594 (1991), in which this office concluded public employees may have a privacy interest in their drug test results. *See* ORD 594 (suggesting identification of individual as having tested positive for use of illegal drug may raise privacy issues), 455 at 5 (1987) (citing *Shoemaker v. Handel*, 619 F. Supp. 1089 (D.N.J. 1985), *aff'd*, 795 F.2d. 1136 (3rd Cir. 1986)). We note the submitted information consists of the results of drug and alcohol tests administered to the individual named in the request for information, who is a town employee. You state in your brief to this office that the accident that is the subject of the request for information "is directly related to the named individual's employment." As this office has explained on many occasions, information involving public officials and employees and public employment is generally not private because the public has a legitimate interest in such information. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 5 (1986) (public has legitimate interest in knowing reasons for public employee's dismissal, demotion, or promotion), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private). Although the information at issue may be highly intimate or embarrassing, the public has a legitimate interest in the information. Therefore, we conclude the town may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the town must release the submitted 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](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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 583128

Enc. Submitted documents

c: Requestor  
(w/o enclosures)