



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2015

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

OR2015-21055

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# 582206.

The Town of Flower Mound (the "town"), which you represent, received a request for information involving the requestor or a named individual at a specified address. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim 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. Common-law privacy 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 doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled

summary of information and noted individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks all reports pertaining to the named individual. This portion of the request requires the town to compile the named individual's criminal history and implicates the named individual's right to privacy. Upon review of the request and the submitted information, we find the requestor is, in part, seeking specified reports involving herself and the named individual. This aspect of the request does not implicate the named individual's right to privacy, and the submitted reports involving the requestor and the named individual may not be withheld as a compilation of his criminal history under section 552.101 in conjunction with common-law privacy on the basis of the named individual's privacy interests. Therefore, we will address your arguments against the disclosure of this information. However, to the extent the town maintains unspecified law enforcement records, other than the reports involving the requestor and the named individual, depicting the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to the CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 21, 2015 Tex. Sess. Law Serv. 4327, 4337 (Vernon) (to be codified as an amendment to Gov't Code § 411.083(a)). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the information we have marked consists of CHRI that is confidential under section 411.083. Thus, the town must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find the town has failed to demonstrate any of the remaining

information at issue constitutes confidential CHRI. Therefore, the town may not withhold any of the information at issue under section 552.101 of the Government Code on that basis.

The doctrine of common-law privacy also excepts the types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*. See 540 S.W.2d 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). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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 supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>1</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, the requestor knows both the identity of the individual involved and the nature of the incident in one of the submitted reports. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the town must generally withhold the report we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the town must generally withhold the information we have marked as well as dates of birth of all public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>1</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

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*. Thus, the information you have marked as well as the information we have marked must generally be withheld under section 552.130. Furthermore, we find the audio portion of the submitted video recording contains motor vehicle record information. We note the audio portion of the video recording is intertwined with the video portion of the recording. You state the town lacks the technological capability to redact the confidential information in the video recording. Accordingly, the town must also withhold the submitted video recording in its entirety under section 552.130 of the Government Code. *See Open Records Decision No. 364 (1983)*.

However, we note common-law privacy and section 552.130 of the Government Code protect personal privacy. Thus, the requestor has a right of access to her own date of birth under section 552.023 of the Government Code. *See Gov't Code § 552.023(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 individual requests information concerning himself). Furthermore, we note the requestor may be acting as the authorized representative of her spouse, whose privacy interests are at issue. In that event, the requestor would have a right of access to her spouse's private information. *See Gov't Code § 552.023(a)*. Accordingly, if the requestor is acting as her spouse's authorized representative, then the town may not withhold from this requestor information that would otherwise be withheld under section 552.101 in conjunction with common-law privacy or section 552.130 to protect this individual's privacy. However, if the requestor is not acting as her spouse's authorized representative, then to the extent the town maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. The town must also withhold the information pertaining to her spouse that we have marked and her spouse's date of birth under section 552.101 in conjunction with common-law privacy and section 552.130.

In summary, if the requestor is not her spouse's authorized representative, then any information maintained by the town that depicts the requestor's spouse as a suspect, arrested person, or criminal defendant must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and the submitted video recording in its entirety under section 552.130 of the Government Code. The town must generally withhold the information we have marked as well as dates of birth of all public citizens under section 552.101 of the Government Code in conjunction with common-law privacy and the information marked under section 552.130 of the Government Code. However, if the requestor is acting as her spouse's authorized representative, the town may not withhold the

information we have marked or her spouse's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy or the information marked under section 552.130 of the Government Code. 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 [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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bhf

Ref: ID# 582206

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 her own information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a). Further, because the requestor may have a right of access to her spouse's information being released, the town must again seek a decision from this office if it receives another request for the same information from another requestor.