



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 9, 2015

Ms. Andrea D. Russell  
Counsel for the Town of Flower Mound  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2015-21281

Dear Ms. Russell:

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# 582748.

The Town of Flower Mound (the "town"), which you represent, received two requests for a specified document distributed by a named individual during a specified public meeting and one request for all communications from the named individual to the town during the specified public meeting. You claim the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by an interested third party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you contend the submitted information is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body:

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002(a). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You state the submitted information consists of "personal comments made in a private Facebook group" that were "dispersed . . . by a member of the public at a public meeting." Thus, you argue, the submitted information was not "written, produced, collected, assembled, or maintained" at the direction of the [t]own or "under a law or ordinance or in connection with the transaction of official business." We note, however, the town possesses the submitted information and it was collected by the town at a public meeting. Thus, we find the submitted information was collected and is maintained by the town in connection with the transaction of official business. As a result, the submitted information is public information under section 552.002 that must be released unless it falls within an exception to public disclosure. See Gov't Code §§ 552.002, .021. Accordingly, we will address the submitted arguments against disclosure of this information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. We understand the interested third party to raise section 552.101 in conjunction with the Stored Communications Act (the "SCA"), 18 U.S.C. §§ 2701-2712. Section 2701 provides, in part, that "whoever . . . (1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or (2) intentionally exceeds an authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section." 18 U.S.C. § 2701(a). The third party notes that the type of information at issue in this ruling request has been found by a court to be subject to the SCA. See *Ehling v. Monmouth-Ocean Hosp. Serv. Corp.*, 961 F. Supp. 2d 659, 669 (D.N.J. 2013) (holding non-public Facebook wall posts are covered by the SCA). We note, however, that, although section 2701 makes criminal certain practices related to unauthorized access to wire or electronic communications, it is not a confidentiality provision. See Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential).

Therefore, we conclude the town may not withhold the submitted information under section 552.101 in conjunction with the SCA.

Section 552.101 of the Government Code also 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. Upon review, we find no part of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the town may not withhold any portion of the submitted information under section 552.101 of the Government Code on this basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code.<sup>1</sup> *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. You state, and provide documentation showing, the individual whose information is at issue timely requested confidentiality of his social security number and family member information under section 552.024. Therefore, the town generally must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, you also represent the individual has authorized release of the information you have highlighted. Therefore, to the extent the individual has authorized release of the highlighted information, the town may not withhold the information we have marked within the highlighted information under section 552.117(a)(1) of the Government Code. In any case, the town must withhold the information we have marked in the non-highlighted portion under section 552.117(a)(1) of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released.

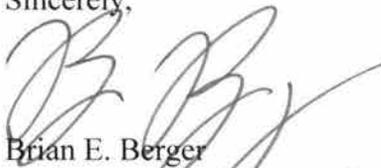
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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read "B. Berger", is written over the typed name.

Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 582748

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Third Party  
(w/o enclosures)