



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 29, 2015

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

OR2015-27244

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# 592574 (PIR# 905-15, 936-15).

The Town of Flower Mound (the "town"), which you represent, received two requests from the same requestor for all police reports pertaining to a specified address involving the requestor and three other named individuals. You claim the submitted information is exempted from disclosure under sections 552.101, 552.1175,¹ and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted video recordings are not responsive because they do not pertain to the specified address or named individuals. This ruling does not address the public availability of any information that is not responsive to the request, and the town is not required to release that information in response to the request.

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 if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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

¹Although you raise section 552.117 for portions of the submitted information, we note section 552.1175 is the proper exception in this instance because the town does not hold the submitted information in an employment capacity.

privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history 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 that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The present request, in part, requires the town to compile unspecified law enforcement records concerning the individuals named in the request. We note the requestor has a right of access to his own private information that would otherwise be excepted from public disclosure 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, to the extent the town maintains any unspecified law enforcement records depicting the other named individuals as suspects, arrestees, or criminal defendants, the town must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the requestor is also seeking reports involving himself and the named individuals. This aspect of the request does not implicate the named individuals' right to privacy, and the submitted reports involving the requestor and the named individuals may not be withheld in their entirety as a compilation of the named individuals' criminal histories. Therefore, we will address your arguments against disclosure of the information at issue.

Section 552.101 of the Government Code also encompasses information confidential under section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find some of the submitted information, which we have marked, consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed as a result of an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of Family Code). Accordingly, we find this information is subject to section 261.201 of the Family Code. You have not indicated the town’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information at issue is confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the town must withhold the information we marked from disclosure under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, upon review, we find no portion of the remaining information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed as a result of an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. Accordingly, no portion of the remaining information is confidential under section 261.201(a) of the Family Code, and the town may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

As noted above, section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found.*, 540 S.W.2d at 685. 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). 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. *Indus. Found.*, 540 S.W.2d 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.² *Tex. 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

²Section 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).

pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, the requestor is one of the individuals whose privacy interests are at issue. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the requestor has a right of access to his own information that would otherwise be confidential under common-law privacy. Accordingly, the town may not withhold any of the requestor's information from him under section 552.101 of the Government Code on the basis of common-law privacy. Therefore, the town must withhold the information we marked, and all public citizens' dates of birth other than the requestor's, under section 552.101 of the Government Code in conjunction with common-law privacy. The town also must withhold the corresponding information from the submitted video recordings, as we have indicated, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). You assert some of the remaining information is excepted from disclosure under section 552.1175. Upon review, we find you have failed to demonstrate any of the remaining information is subject to section 552.1175 of the Government Code. Accordingly, the town may not withhold any of the remaining information on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). You state some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Upon review, we find the town must withhold the motor vehicle information it indicated under section 552.130 of the Government Code. However, we find the remaining information does not contain any discernible information that is subject to section 552.130. As such, the town may not withhold any of the remaining video information on that basis.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection(c).³ See *id.* § 552.137(a)-(c).

³The 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).

Accordingly, the town must withhold the personal e-mail addresses, which we have marked, under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See id.* § 552.137(b).

In summary, the town must withhold the marked CHRI compilation under section 552.101 of the Government Code in conjunction with common-law privacy. The town also must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The town must withhold the information we marked and the corresponding information we have indicated in the video recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The town must also withhold the public citizens' dates of birth, other than the requestor's date of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the motor vehicle information it has indicated under section 552.130 of the Government Code. The town must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. The town must release the remaining information.⁴

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

⁴We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the town receives another request for this information from a different requestor, the town must again seek a ruling from this office.

Ref: ID# 592574

Enc. Submitted documents

c: Requestor
(w/o enclosures)