



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 4, 2014

Ms. Andrea D. Russell  
Counsel for Town of Flower Mound  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2014-21941

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# 546351.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified arrest. The town states it will withhold information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim portions of the submitted information are 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444

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<sup>1</sup>We note 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. *See id.* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold specific categories of information, including an e-mail address of a member of the public, under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

You state the submitted documents and audio recording contain information identifying a complainant who reported an alleged violation of law to the Flower Mound Police Department. Upon review, there is no indication the subject of the complaint knows the identity of the informer. Based upon your representation and our review, we conclude the town has demonstrated the applicability of the common-law informer's privilege to the information at issue. Although you claim the town does not have the technological capability to redact the informer's identifying information from the submitted audio recording, because the town had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the town has the capability to produce a redacted copy of the submitted audio recording. Therefore, we find the town may withhold the identifying information you have indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege from the submitted documents and audio recording.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). 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. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* 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 F of the Government Code. *See* Gov't Code § 411.083. 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. *Id.* § 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 in conjunction with chapter 411, subchapter F of the Government Code. However,

section 411.083 does not apply to active warrant information or other information relating to an individual's current involvement in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement with criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find a portion of the information at issue, which 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, the remaining information at issue does not constitute confidential CHRI. Accordingly, the town may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information (1) containing highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) 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 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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information you have indicated, and the additional information we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the town must generally withhold the information you have indicated, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

In this instance, we note the submitted information indicates the requestor is the wife of the individual whose information is at issue, and may be acting as his authorized representative. As such, the requestor may have a right of access to her spouse's information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the requestor is acting as her spouse's authorized representative, she has a right of access to his information pursuant to section 552.023(a), and it may not be withheld from her under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not acting as her spouse's authorized representative, the town must withhold the information you have indicated, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the town may withhold the identifying information you have indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege from the submitted documents and audio recording. 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. Unless the requestor is the authorized representative of her spouse, the town must withhold the information you have indicated, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The town must release the remaining information.<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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/cbz

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<sup>2</sup>We note the requestor has a right of access beyond that of the general public to some of the information being released that pertains to herself, which is normally excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.130 of the Government Code, and section 552.147 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. We also note the information being released contains confidential information regarding the requestor's child to which the requestor has a right of access as the child's parent. *See* Gov't Code § 552.023(a); ORD 481 at 4. 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). Thus, if the town receives another request for this information from a person who does not have such a right of access, section 552.130(c) authorizes the town to redact the requestor's motor vehicle record information. 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 under the Act. *Id.* § 552.147(b). Accordingly, if the town receives another request for this same information from a person who does not have such a right of access, section 552.147(b) authorizes the town to redact the requestor's social security number without the necessity of requesting a decision under the Act. However, the town must again seek a decision from this office if it receives another request for the remaining information from another requestor.

Ref: ID# 546351

Enc. Submitted documents

c: Requestor  
(w/o enclosures)