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January 16, 2025

Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

Re: Public Information Act Request of Michele Berry Received by the Town of Flower Mound on January 2, 2025

Dear General Paxton:

I represent the Town of Flower Mound in regard to the above-referenced matter. On January 2, 2025 the Town received the public information request from Michèle Berry attached hereto as Exhibit A. Please note the that Town offices were closed on Wednesday January 1, 2025 in observance of New Year's Day.

Pursuant to Section 552.301 of the Public Information Act (the "Act"), the Town requests your determination regarding whether the responsive information falls within an exception to disclosure. The information the Town believes may be withheld is attached hereto as Exhibit B. In particular, the Town believes that the following exceptions apply:

I. Section 552.101: Common Law Privacy

The Town asserts that the responsive materials must be withheld pursuant to Section 552.101 of the Act which encompasses the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is:

- (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and
- (2) of no legitimate public interest.

See 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 must be met. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, your office has found that

some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORD 292, 229; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld).

The responsive information, enclosed and marked as Exhibit B, contains highly personal information relating to sexual assault. Accordingly, the Town believes that the responsive information is highly intimate or embarrassing, such that the release would be highly objectionable to a person of ordinary sensibilities and of no legitimate public interest. The Town believes that it must withhold the enclosed information in its entirety under Section 552.101 in conjunction with common law privacy.

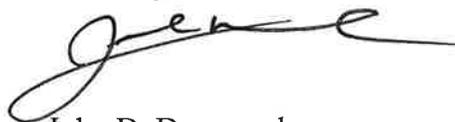
II. Previous Determination

Your office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an Attorney General decision. Additionally, your office has held that a governmental body may redact a living person's social security number without the necessity of requesting an Attorney General decision. Therefore, the Town has not raised arguments regarding this information which may be contained in Exhibit B or other responsive material. To the extent this information is included in Exhibit B, this information will be withheld in the event of a ruling requiring the Town to release any portion of the responsive documents.

Section 552.130(c) provides that subject to Chapter 730 of the Transportation Code, a governmental body may redact information, without the necessity of requesting an Attorney General decision, if it relates to a driver's license, a personal identification document, or a motor vehicle title or registration issued by an agency of this state or another state or country. If the Town redacts such information, it will notify the requestor as required by Section 552.130(e). The Town, therefore, has not raised arguments regarding these types of information.

The requestor has been notified by copy of this letter that the Town has chosen to seek an Attorney General decision on this matter. Please contact me at the above address with any questions regarding this matter.

Sincerely,



John D. Domenech

January 16, 2025

Page 3

JDD:dlw
Enclosures

cc: Michele Berry (w/o enclosures)
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