



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 3, 2009

Ms. Mary Azam  
Georgetown Police Department  
809 Martin Luther King, Jr. Street  
Georgetown, Texas 78626

OR2009-17156

Dear Ms. Azam:

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# 363076 (GT # 512).

The Georgetown Police Department (the "department") received a request for all reports pertaining to a named individual, including information related to a specified case number. You claim that the requested information is 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains 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. *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 of this test must be satisfied. *See id.* at 681-82. The type 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. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are 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). We note that 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.

In this instance, the request is for any records pertaining to a named individual, including information related to a specified incident number. Thus, we agree that the request, in part, requires the department to compile the named individual's criminal history. However, you have only submitted information pertaining to the specified incident number. We find the release of the submitted information does not implicate the privacy interests of the named individual. Accordingly, the department may not withhold the submitted information as a criminal history compilation under section 552.101 in conjunction with common-law privacy. Upon review, we do agree that some of the submitted information is highly intimate or embarrassing and of no legitimate public interest.

However, we note that the requestor identifies herself as a senior investigator for the Texas Medical Board (the "board"). Section 153.006 of the Occupations Code provides in part that "[t]he [board] may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant." Occ. Code § 153.006(a). In this instance, the information to which the board seeks access pertains to a physician. Moreover, the board's statutory right of access to a licensed physician's criminal records under section 153.006 prevails over section 552.101 of the Government Code in conjunction with common-law privacy, which is a general exception to disclosure under the Act. *See Open Records Decision No. 451 at 4 (1986)*. We therefore conclude that the board has a right of access to the submitted information under section 153.006 of the Occupations Code, and the department must release the submitted information to the requestor.<sup>1</sup> *See Open Records Decision No. 613 at 4 (1993)* (exceptions in Act cannot impinge on statutory right of access to information).

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.

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<sup>1</sup>Should the department receive another request for this same information from a person who would not have a right of access to the information, the department should resubmit this information and request another decision. *See Gov't Code §§ 552.301(a), .302.*

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "T Wilcox". The signature is fluid and cursive.

Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 363076

Enc. Submitted documents

c: Requestor  
(w/o enclosures)