



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 29, 2010

Mr. William Ryan  
Lieutenant, Record Division  
Pharr Police Department  
1900 South Cage  
Pharr, Texas 78577-6751

OR2010-01436

Dear Mr. Ryan:

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# 368668.

The Pharr Police Department (the "department") received a request for all police and arrest records pertaining to a named individual and a specified citizen complaint. You claim that the submitted 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." 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. *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. 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. U.S. 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. The present request, in part, requires the department to compile unspecified law enforcement records concerning the individual at issue. We find that this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the

named individual as a suspect, arrestee, or criminal defendant, the department generally must withhold such information in its entirety under section 552.101 in conjunction with common-law privacy. However, you have also submitted records that do not list the named individuals as a suspect, arrestee, or criminal defendant and a complaint specified by the requestor. This information does not implicate the named individuals' privacy concerns. Therefore, we will address your other argument against the disclosure of this information.

Section 552.101 also encompasses information protected by other statutes, such as section 143.089 of the Local Government Code.<sup>1</sup> Section 143.089 provides for the maintenance of two different types of personnel files for each police officer employed by a civil service city: one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Under section 143.089(a), the officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Section 143.089 does not make confidential the information maintained in an officer's civil service file.

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Local Gov't Code § 143.089(g). The information in a file maintained by a police department pursuant to section 143.089(g) is confidential. Local Gov't Code § 143.089(g); *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.) (restricting confidentiality under Local Gov't Code § 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You state the complaint at issue pertains to an internal investigation that is still pending and has not resulted in disciplinary action against the officer. We understand this information

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<sup>1</sup>We understand the City of Pharr is a civil service municipality under chapter 143 of the Government Code.

is maintained in the department's internal files concerning the named officer. Based on your representations and our review of the documents at issue, we agree this information, which we have marked, is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

In summary, the department must withhold any responsive records in which the named individual is listed as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.101 in conjunction with section 143.089(g). The remaining information must be released.

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.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,



James McGuire  
Assistant Attorney General  
Open Records Division

JM/jb

Ref: ID# 368668

Enc. Submitted documents

c: Requestor  
(w/o enclosures)