



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

Mr. Floyd M. Akers
City Attorney
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691

OR2010-15542

Dear Mr. Akers:

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# 396612.

The Pflugerville Police Department (the "department") received a request for all police reports pertaining to three named individuals and a specified address from 2006 through 2010. You claim a portion of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of our records indicate, the department is authorized to withhold any of the redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Because we are unable to discern the nature of the redacted information, the department has failed to comply with section 552.301, and such information is presumed public under section 552.302. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Thus, we conclude the department must release the redacted information to the requestor. If you

believe the redacted information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ *Id.* § 552.101. This section 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). 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks, in part, all police reports pertaining to three named individuals during a specified time period. We find this request for unspecified law enforcement records implicates the named individuals' rights to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.²

You have submitted records that do not list the named individuals as suspects, arrestees, or criminal defendants. Because these records do not constitute a compilation of the named individuals' criminal histories, the department may not withhold them in their entirety under section 552.101 on that basis. Common-law privacy also protects the types of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including 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. *See Indus. Found.*, 540 S.W.2d at 683. We note this office has also found 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*

¹The 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).*

²As we are able to make this determination, we need not address your argument against disclosure.

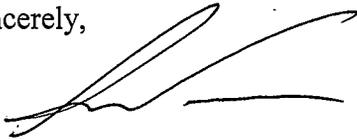
physical handicaps). Upon review, we find the information we marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the department maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/tp

Ref: ID# 396612

Enc. Submitted documents

c: Requestor
(w/o enclosures)