



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

Ms. Cecilia Gamez
Crime Records Office
City of McAllen Police Department
P.O. Box 220
McAllen, Texas 78505-0220

OR2011-14696

Dear Ms. Gamez:

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# 432540.

The McAllen Police Department (the "department") received requests from two different requestors for information pertaining to case number 2010-00071127. You claim the submitted incident report 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. This section encompasses the doctrine of common-law privacy, which protects information if it (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 established. *Id.* at 681-82. The types of information considered intimate or 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 some kinds of medical information or

information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Additionally, 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 individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the submitted incident report is protected by common-law privacy and should be withheld in its entirety. In this instance, however, you have not demonstrated, nor does the submitted report reflect, the report involves a situation in which the report must be withheld in its entirety on the basis of common-law privacy. Consequently, the department may not withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, some of the submitted information consists of medical information and compiled criminal history information in which we find there is no legitimate public interest. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining information contains a license plate number. Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release.¹ Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(2)). The department must withhold the license plate number we have marked under section 552.130 of the Government Code.²

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the license plate number we have marked under section 552.130 of the Government Code. The department must release the remaining information.

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).

²This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 432540

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)