



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2010

Mr. Floyd M. Akers
City Attorney
City of Pflugerville
P.O. Box 679
Pflugerville, Texas 78691-0679

OR2010-06554

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# 379165.

The Pflugerville Police Department (the "department") received a request for: (1) a specified police report, (2) police reports pertaining to a specified address for a certain time period, and (3) information pertaining to a named individual for a certain time period. You state you have released some of the requested information to the requestor. You claim that the submitted 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.

We note a portion of the requested information was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2010-03618 (2010). In that ruling, we determined that with the exception of basic information, which must be released, the department may withhold report numbers 10020116 and 10020358 under section 552.108(a)(1) of the Government Code. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the department may continue to rely on Open Records Letter No. 2010-03618 as a previous determination and withhold or release report numbers 10020116 and 10020358 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as

was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 Gov't Code § 552.101. Section 552.101 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. *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* includes 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 id.* at 683. This office has found that a compilation of an individual's criminal history is also 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). Further, 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 a named individual. We find this request for unspecified law enforcement records implicates the privacy rights of the named individual. Therefore, to the extent the department maintains law enforcement records depicting this individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.²

In summary, the department may continue to rely on Open Records Letter No. 2010-03618 as a previous determination and withhold or release report numbers 10020116 and 10020358 in accordance with that ruling. To the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

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 our ruling is dispositive, we need not address your argument against disclosure.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 379165

Enc. Submitted documents

cc: Requestor
(w/o enclosures)