



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2013

Lt. William Ryan
Record Division
Pharr Police Department
1900 South Cage
Pharr, Texas 78577

OR2013-01193

Dear Lieutenant 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# 476911.

The Pharr Police Department (the "department") received a request for a background check or a history of police reports on the requestor's brother. 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." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *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. 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 a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the requestor asks for a history of police reports and a background check of a named individual. This request requires the department to compile unspecified law enforcement records concerning the named individual, thus implicating such individual's right to privacy. Therefore, to the extent the department maintains any law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the request indicates the requestor is requesting this information on behalf of his brother. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Section 552.229(a) provides consent for release of information available under section 552.023 must be in writing and signed by the person or the person's authorized representative. *Id.* § 552.229(a). Thus, under section 552.023, with proper authorization from the individual with the privacy interest, the requestor in this case would have a right of access to information that would ordinarily be withheld to protect his brother's common-law privacy. Therefore, to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy, unless the department receives proper authorization for release from the individual with the privacy interest. However, if the department receives proper authorization for release from the individual with the privacy interest, the requestor has a special right of access to the compilation of his brother's criminal history, to the extent it exists, and it may not be withheld under section 552.101 in conjunction with common-law privacy. In that instance, we will consider whether the submitted information must be withheld under the Act. We also note you have submitted information which does not depict the named individual as suspect, arrestee, or criminal defendant. This information does not implicate the individual's privacy rights. Accordingly, we will consider whether this information must be withheld under the Act as well.

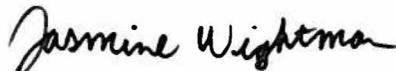
Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Accordingly, the department must withhold the license plate numbers we have marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the individual at issue as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy, unless the department receives proper authorization for release from the individual with the privacy interest. If the department receives proper authorization for release from the individual with the privacy interest, the department must withhold the information marked under section 552.130, and the remaining information must be released.¹

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,



Jasmine D. Wightman
Assistant Attorney General
Open Records Division

JDW/dls

Ref: ID# 476911

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note in that event, because the requestor would have a right of access to information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.