



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 26, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-08849

Dear Mr. Phillips:

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# 345849 (City Request No. 2742-09).

The City of Fort Worth (the "city") received a request for a specific police report. You state you have redacted certain Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Section 552.101 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 common-law right to privacy. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *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. *Id.* 681-82.

You claim that the name and identification number of the undercover officers are confidential pursuant to common-law privacy and "special circumstances." You argue that release of this information "would likely cause the [officer] to face 'imminent threat of physical danger'" and therefore special circumstances exist under common-law privacy to withhold the identity of this officer. However, the Third Court of Appeals recently ruled that the "special circumstances" exception found in past Attorney General Open Records Decisions directly conflicts with Texas Supreme Court precedent regarding common-law privacy. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. and Hearst Newspapers, L.L.C.*, No. 03-08-00516-CV, 2009 WL 1491880 (Tex. App.—Austin May 29, 2009, no pet. h.). The court of appeals ruled that the two-part test set out in *Industrial Foundation* is the "sole criteria" for determining whether information can be withheld under common-law privacy. *Id.*; see also *Indus. Found.*, 540 S.W.2d at 686. In this instance, the information at issue consists of undercover officers' name and identification number. Upon review, we find that the officers' name and identification number are not intimate or embarrassing. As you have failed to meet the first prong of the *Industrial Foundation* test for privacy, we find that the information at issue is not confidential under common-law privacy and the city may not withhold it under section 552.101.

The 81st Legislature recently enacted section 552.151 of the Government Code which relates to a public employee or officer's safety.¹ This section provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

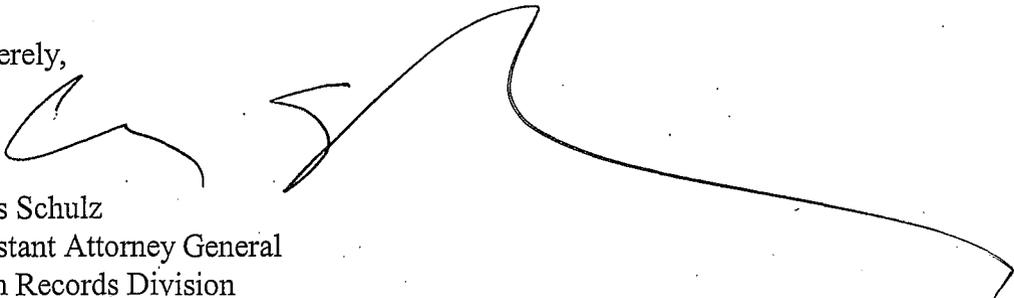
Added by Act of June 3, 2009, 81st. Leg., R.S., S.B. 1068, § 4 (to be codified at Tex. Gov't Code § 552.151). In this instance, you explain the release of the undercover officers' name and identification number would likely cause them to face a threat of imminent physical danger. Based on your representations and our review, we find the city has demonstrated release of the information at issue would subject the officers to a substantial threat of physical harm. Accordingly, the city must withhold the name and identification number of the undercover officers at issue under section 552.151 of the Government Code. 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.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 at (512) 475-2497.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 345849

Enc. Submitted documents

cc: Requestor
(w/o enclosures)