



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2009

Mr. Samuel D. Hawk
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-14844

Dear Mr. Hawk:

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# 358904 (DPD request number 2009-6155).

The Dallas Police Department (the "department") received a request for information pertaining to the transfer of narcotics detectives. You claim a portion of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim a portion of the submitted information is confidential pursuant to common-law privacy and "special circumstances." You argue that release of the information at issue would create an inherent risk of physical danger for an undercover narcotics investigator and therefore a special circumstance exists under common-law privacy to withhold the submitted information. 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.*, 287 S.W.3d 390, 394-95 (Tex. App.—Austin 2009, pet. filed). 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 the undercover officer's name and number. We find that none of this information is intimate or embarrassing. As you have failed to meet the first prong of the *Industrial Foundation* test for privacy, we find that none of the submitted information may be withheld under section 552.101 on this basis.

However, 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.

Gov't Code § 552.151. In this instance, you explain the release of the undercover officer's name and identification number would likely cause the officer to face a substantial threat of physical harm. Based on your representations and our review, we find the department has demonstrated that section 552.151 is applicable to the information at issue. Accordingly, the department must withhold the name and identification number you have marked under section 552.151 of the Government Code.² As you raise no further exceptions for the remaining information, it 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/jb

¹The Office of the Attorney General will raise a mandatory exception like section 552.151 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²As our ruling is dispositive, we do not address your remaining argument against disclosure.

Ref: ID# 358904

Enc. Submitted documents

c: Requestor
(w/o enclosures)