



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2013

Ms. Lizbeth Islas Plaster
City Attorney
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9002

OR2013-03169A

Dear Ms. Plaster:

This office issued Open Records Letter No. 2013-03169 (2013) on February 25, 2013, pertaining to the City of Lewisville (the "city"). Since that date, we have received new information that affects the facts on which this ruling was based. We have examined this ruling and determined, although its conclusion is correct, Open Records Letter No. 2013-03169 relied, in part, on incorrect information to reach that conclusion. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on February 25, 2013. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

The city received a request for any reports filed during a specified time period pertaining to a specified address. You state the city has released some of the requested information. You claim 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." *Id.* § 552.101. Section 552.101 encompasses the common-law physical safety exception that the Texas Supreme Court recognized in *Texas Department of Public Safety v. Cox Texas Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 117 (Tex. 2011) ("But freedom from physical harm is an independent interest protected under law, untethered to the

right of privacy.”). In the *Cox* decision, the Supreme Court recognized, for the first time, a common-law physical safety exception to required disclosure. *Cox*, 343 S.W.3d at 118. Pursuant to this common-law physical safety exception, the court determined “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned “vague assertions of risk will not carry the day.” *Id.* at 119.

You argue release of the submitted information would create a substantial threat of physical harm to a named individual. You explain the named individual is the requestor’s estranged wife and they “have been living in a volatile and violent relationship.” You state the named individual has expressed concerns the requestor will harm her. You also state, and provide documentation showing, the named individual has filed for divorce. Further, you explain the city’s police department has been called to the specified address on several occasions and the requestor has a history of violent behavior. Upon review, we find you have demonstrated release of the named individual’s most recent address, which we have marked, would create a substantial threat of physical harm to the individual at issue. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. However, we find you have not sufficiently demonstrated that a substantial risk of physical harm to the named individual would result from disclosure of the remaining information. Thus, the city may not withhold any of the remaining information under section 552.101 on that basis.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license issued by a Texas agency, or an agency of another state or country. *See* Gov’t Code § 552.130(a)(1)-(2). Upon review, we find the city must withhold the driver’s license information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law privacy physical safety exception and section 552.130 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 a mandatory exception on behalf of a governmental body. 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Luttrall".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 508840

Enc. Submitted documents

c: Requestor
(w/o enclosures)