



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 18, 2013

Ms. Myrna S. Reingold  
Legal Department  
Galveston County  
722 Moody, Fifth Floor  
Galveston, Texas 77550

OR2013-06378

Dear Ms. Reingold:

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# 484537.

The County of Galveston (the "county") received two requests from the same requestor for any correspondence regarding the use of county facilities for training purposes of military-style or SWAT or police training or drill at the former Galveston County jail facility between January 1, 2013 through January 29, 2013, as well as January 20, 2013 through January 31, 2013. You state some of the requested information has been released to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.137, and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions 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. 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) ("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

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<sup>1</sup>Although you raise section 552.111 in your initial brief, you have provided no arguments regarding the applicability of this exception. Accordingly, we assume you have withdrawn this exception.

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 state the information you have highlighted pertains to military service members of a special operations unit that is routinely deployable overseas. You argue release of the highlighted information would create a substantial threat of physical harm to the service members at issue. You state releasing this identifying information to the public “would enable terrorists to obtain the information, and [enable] them to associate service members with certain units” which could endanger the lives of the service members. You also provide a letter from the Department of the United States Army (the “Army”) Special Operations Command, objecting to the disclosure of the information at issue. The Army states that “this command is concerned that release of the names and phone numbers of our service members could result in the use of this information to harm them or their families[.]” Based on these representations and our review, we find you have demonstrated release of the information you have highlighted would create a substantial threat of physical harm to the individuals at issue. Accordingly, the county must withhold the information you have highlighted under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.<sup>2</sup>

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](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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 484537

Enc. Submitted documents

c: Requestor  
(w/o enclosures)