



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2013

Ms. Cecilia Gamez
Lead C.S.S.
Crime Records Office
City of McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2013-20678

Dear Ms. Gamez:

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# 507073.

The McAllen Police Department (the "department") received a request for the department's vehicle pursuit policy. You claim 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.

Initially, we note the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-08873 (2012). In that ruling, we determined the department may withhold the information we marked under section 552.108(b)(1) of the Government Code and must release the remaining information. You now seek to withhold the submitted information, portions of which may have been previously released pursuant to Open Records Letter No. 2012-08873, under sections 552.101 and 552.108 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive

exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential by law. Although you raise section 552.108 for the submitted information, section 552.108 does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not now withhold any previously released information under section 552.108 of the Government Code. However, you also raise section 552.101 of the Government Code for the submitted information. Section 552.101 makes information confidential under law; thus, we will address your argument under section 552.101 for any of the submitted information that was previously released.

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. For many years, this office determined section 552.101, in conjunction with the common-law right to privacy, protected information from disclosure when “special circumstances” exist in which the disclosure of information would place an individual in imminent danger of physical harm. *See, e.g.*, Open Records Decision Nos. 169 (1977) (special circumstances required to protect information must be more than mere desire for privacy or generalized fear of harassment or retribution), 123 (1976) (information protected by common-law right of privacy if disclosure presents tangible physical danger). However, the Texas Supreme Court has held freedom from physical harm does not fall under the common-law right to privacy. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 117 (Tex. 2011) (holding “freedom from physical harm is an independent interest protected under law, untethered to the right of privacy”). Instead, in *Cox*, the court recognized, for the first time, a separate common-law physical safety exception to required disclosure that exists independent of the common-law right to privacy. *Id.* at 118. Pursuant to this common-law physical safety exception, “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 contend the previously released information is protected by the common-law physical safety exception. Upon review of the arguments and the information at issue, we find the department has not demonstrated the release of the information at issue would create a substantial threat of physical harm. Thus, the department may not withhold any of the previously released information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Therefore, the department does not present any law, and we are unaware of any, that expressly prohibits release of or makes confidential the information we previously ordered released. Furthermore, we have no indication the law, facts, or circumstances that were the basis of our prior ruling have changed. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Thus, we conclude the department may continue to rely on Open Records Letter No. 2012-08873 as a previous determination and withhold or release the submitted information in accordance with that ruling.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/tch

Ref: ID# 507073

Enc. Submitted documents

c: Requestor
(w/o enclosures)