



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2014

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2014-01333

Dear Ms. Armstrong:

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# 512806 (DPD ORR #2013-12870).

The Dallas Police Department (the "department") received a request for information pertaining to a specified address for a specified time period, excluding the names and identification numbers of undercover officers, Texas identification card numbers, and compilations of criminal records. 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, as noted above, in her request for information, the requestor specifically excludes the names and identification numbers of undercover officers, Texas identification card numbers, and compilations of criminal records. Therefore, those types of information are not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release such information in response to this request.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection,

investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the responsive information relates to a pending criminal investigation and prosecution. Based upon your representation and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the responsive information.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the department may withhold the responsive information under section 552.108(a)(1).¹

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. This section 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 (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

¹As our ruling is dispositive, we need not address your remaining argument for this information.

regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119.

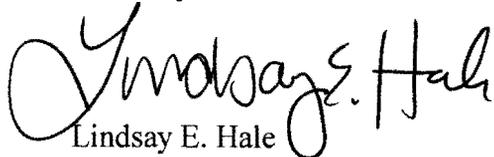
You argue the disclosure of the basic information could jeopardize the safety of undercover officers. Upon review, we find none of the responsive basic information identifies an undercover officer. Further, we conclude you have made only vague assertions of risk of harm that could result from the disclosure of the information at issue. Accordingly, the department may not withhold any of the responsive basic information under section 552.101 in conjunction with the common-law physical safety exception.

In summary, with the exception of basic information, the department may withhold the responsive information under section 552.108(a)(1) of the Government Code. The department must release the responsive basic information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 512806

Enc. Submitted documents

c: Requestor
(w/o enclosures)