



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2014

Mr. David H. Guerra
Counsel for the City of Mission
King, Guerra, Davis & Garcia
P.O. Box 1025
Mission, Texas 78573

OR2014-19213

Dear Mr. Guerra:

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# 540558.

The City of Mission (the "city") received a request for the names and business telephone numbers of members of the Planning and Zoning Commission. You claim the requested information is excepted from disclosure under section 552.152 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state some of the submitted information is not responsive to the instant request for information. This ruling does not address the public availability of the non-responsive information, and that information need not be released.

You seek to withhold the responsive information under section 552.152 of the Government Code, which provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] 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 § 552.152. You inform us that, at the time the requestor made his request, he made alarming statements to city staff that greatly concerned them. You further state, and have submitted documentation reflecting, the Mission Police Department was contacted and investigated the incident. Based on your representations and our review, we find you have demonstrated release of the business telephone numbers would subject the commission members to a substantial risk of physical harm. Accordingly, the city must withhold these telephone numbers under section 552.152. However, we find the city may not withhold the requested names, which we note are available on the city's website, under section 552.152.

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 (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.

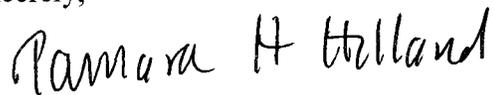
Upon review, we find you have not demonstrated how disclosure of the remaining responsive information would create a substantial threat of physical harm to the individuals at issue. Therefore, the city may not withhold the requested names under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

In summary, the city must withhold the business telephone numbers under section 552.152 of the Government Code. The city must release the remaining responsive 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,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 540558

Enc. Submitted documents

c: Requestor
(w/o enclosures)