



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 27, 2015

Mr. Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711-2157

OR2015-08073

Dear Mr. Bowman:

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# 561267 (TDLR ID #PIR-20150337).

The Texas Department of Licensing and Regulation (the "department") received a request for documents and information pertaining to a specified meeting involving the requestor. 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." 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.*, 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.

You argue release of the submitted information would create a substantial threat of physical harm to a specified department employee who made a human resources complaint about the requestor. You assert the requestor’s “disruptive and explosive behavior” in the workplace generally as well as in response to the complaint and subsequent disciplinary action “give[s] rise to a reasonable concern for the safety and well-being” of the complainant and other department employees. However, upon review, we find you have not sufficiently demonstrated that a substantial risk of physical harm to the individuals at issue would result from disclosure of the submitted information. Thus, the department may not withhold any of the submitted information under section 552.101 on that basis. As you raise no further exceptions against disclosure of the submitted information, the department must release the submitted information.¹

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

¹We note the requestor has a right of access to some of the information being released. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 561267

Enc. Submitted documents

c: Requestor
(w/o enclosures)