



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 19, 2015

Ms. Lisa D. Mares
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-09731

Dear Ms. Mares:

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# 564189.

The City of McKinney (the "city"), which you represent, received a request for information pertaining to candidates for the position of chief of police. You state the city has released some of the requested information. You claim some of 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. You raise section 552.101 in conjunction with sections 24A.3(2), 24A.7(A)(2), and 24A.7(B)(1) of title 51 of the Oklahoma Open Records Act. *See* OKLA. STAT. tit., 51 §§ 24A.3(2), 24A.7(A)(2), (B)(1). The Act generally does not incorporate the confidentiality or access provisions of other states' statutes and regulations that govern the disclosure of information by entities in those states. However, to encourage cooperation between governmental bodies and the exchange of information between government agencies, in some instances a Texas entity may withhold information obtained from a state or federal governmental entity when that entity has determined the information is confidential. *Cf.* Open Records Decision No. 561 at 6-7 (1990) (holding if federal government agency shares its information with Texas governmental entity, Texas entity must

withhold information that federal agency determined to be confidential under federal law). In this case, the applicant, rather than an Oklahoma entity or official, submitted the information at issue to the city. Accordingly, the city may not withhold any of the information at issue under sections 552.101 in conjunction with Oklahoma state law.

Section 552.101 of the Government Code also 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 any of the submitted information would create a substantial threat of physical harm to the individual at issue. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

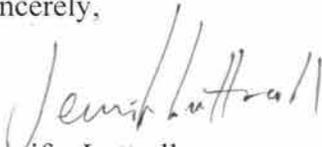
We note some of the remaining information consists of a personal e-mail address subject to section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov’t Code* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. As you raise no further exceptions to disclosure, the remaining information must be released.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 564189

Enc. Submitted documents

c: Requestor
(w/o enclosures)