



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 21, 2015

Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2015-09973

Dear Ms. Cost:

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# 564766 (DPS PIR# 15-0719).

The Texas Department of Public Safety (the "department") received a request for a list of all commissioned Texas Rangers and intelligence officers, including their ranks, companies, and locations.<sup>1</sup> You state you have released some of the information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

You seek to withhold the information at issue under section 552.152 of the Government Code. Section 552.152 provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 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 the information at issue pertains to commissioned intelligence officers employed by the department. You explain these employees are responsible for “targeting transnational criminal organizations and their members and supporting criminal and terrorism investigations throughout the state.” You argue release of the information at issue could cause these individuals to be targeted by criminal and terrorist organizations, thereby creating a substantial risk of physical harm. Based on your representations and our review, we conclude you have demonstrated release of some of the information at issue would subject the department employees at issue to a substantial threat of physical harm. Therefore, the department must withhold the information we have marked under section 552.152 of the Government Code. However, we find you have not demonstrated how the release of any of the remaining information at issue would subject an employee of the department to a substantial risk of physical harm. Accordingly, the department may not withhold any of the remaining information at issue under section 552.152 of the Government Code.

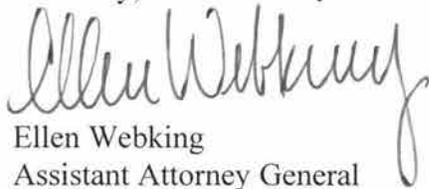
Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *Id.* § 552.101. Section 552.101 of the Government Code encompasses the common-law physical safety exception. The Texas Supreme Court has recognized a common-law physical safety exception to required disclosure. *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”). Pursuant to the 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 the department has not demonstrated the release of the remaining information at issue would subject any person to a substantial threat of physical harm. Accordingly, the department may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

In summary, the department must withhold the information we have marked under section 552.152 of the Government Code. The remaining information must be released.

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](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, appearing to read "Ellen Webking".

Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 564766

Enc. Submitted documents

c: Requestor  
(w/o enclosures)