



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2015

Ms. Judith N. Benton
Assistant City Attorney
Legal Services
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2015-15225

Dear Ms. Benton:

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# 575286 (ORR# LGL-15-181).

The Waco Police Department (the "department") received a request for arrest warrants, incident reports, and arrest affidavits for six named individuals and a specified incident. You state the department has released some of the requested information. 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 information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it does not consist of arrest warrants, incident reports, or arrest affidavits or does not pertain to any of the six named individuals. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to this request.

You seek to withhold the identifying information of department officers from the submitted information under section 552.152 of the Government Code. Section 552.152 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 represent the release of the officers' identities would subject the officers to a substantial threat of physical harm. You state there is "credible intelligence that there will be retaliation by the members of the gangs involved in the incident aimed at those involved in the investigation." Thus, you argue release of the remaining information will jeopardize the safety of those involved in the detection, investigation, and prosecution of the criminal cases. Therefore, we find section 552.152 is applicable to the identities of the department officers within the information at issue. Accordingly, the department must withhold the identifying information of the officers, which you have marked, under section 552.152 of the Government Code.¹

Section 552.101 of the Government Code excepts "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. You argue some of the remaining information is excepted from required disclosure under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. 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. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P.*, 343 S.W.3d 112, 118 (Tex. 2011). 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 failed to demonstrate how release of any portion of the remaining information would create a substantial threat of physical harm to the individual at issue. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

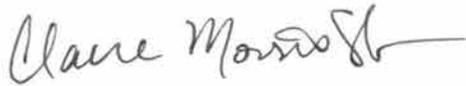
In summary, the department must withhold the identifying information of the department officers, which you have marked, under section 552.152 of the Government Code. The department must release the remaining responsive information.

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

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 black ink, appearing to read "Claire V. Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 575286

Enc. Submitted documents

c: Requestor
(w/o enclosures)