



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2015

Mr. Joe H. Thrash
Assistant Attorney General
Administrative Law Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2015-17508

Dear Mr. Thrash:

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# 576839.

The Texas Historical Commission (the "commission"), which you represent, received a request for the names and contact information for each "Archeological Steward" approved by the commission. You state the commission has released the requested names to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To

¹Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this exception based on the substance of your arguments.

demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82.

Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note an individual's name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not invasion of privacy).

You claim the addresses and telephone numbers of commission volunteers who participate in the Texas Archeological Stewardship Network ("TASN") are confidential under privacy. Upon review, we find the commission has failed to demonstrate the information at issue is highly intimate or embarrassing and not of legitimate public interest. Thus, the commission may not withhold the addresses or telephone numbers at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

We also understand you to claim the addresses and telephone numbers are excepted from required disclosure under section 552.101 of the Government Code in conjunction with 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 release of the information at issue would create a substantial threat of physical harm to the individuals whose information is at issue. Therefore, the commission may not withhold the addresses and telephone numbers of commission volunteers who participate in TASN under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Section 552.137 of the Government Code 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 addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the commission must withhold the submitted e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to disclosure.

In summary, the commission must withhold the submitted e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to disclosure. The commission must release the remaining 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 576839

Enc. Submitted documents

c: Requestor
(w/o enclosures)