



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 10, 2015

Ms. Sylvia McClellan  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215

OR2015-23623

Dear Ms. McClellan:

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# 586764 (DPD Request No. 2015-13938).

The Dallas Police Department (the "department") received a request for a specified offense report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2-3 (1986). You state the submitted information concerns a criminal investigation that has concluded and did not result

---

<sup>1</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.

in a conviction or deferred adjudication. Based on these representations, we agree section 552.108(a)(2) of the Government Code is applicable.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). This information includes, among other items, the identity of the arrested person and a detailed description of the offense, but does not include the identity of a victim or witness, other than the complainant. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

You claim portions of the basic information are excepted from disclosure under section 552.101 of the Government Code, which 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 the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, 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, 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 conclude you have made only vague assertions of risk of harm that could result from the disclosure of the basic information you have marked. Accordingly, the department may not withhold any of the basic information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

In summary, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

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 "Tim Neal". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Neal".

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 586764

Enc. Submitted documents

c: Requestor  
(w/o enclosures)