



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2016

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

OR2016-07201

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# 604103 (ORR Nos. 16-0100 and 16-0109).

The Texas Department of Public Safety (the "department") received two requests from different requestors for a photograph of a named department officer. You claim 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.

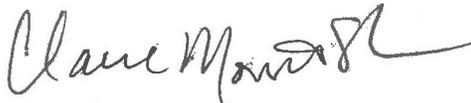
Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a separate 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.

The department informs us the named department officer arrested an individual who subsequently died in the Waller County Jail. You state the individual's arrest by the named department officer and the individual's death have gained national attention from the news media and the public. The department informs us threatening remarks towards the named department officer have been posted on the internet and protests have occurred outside the named department officer's residence. Accordingly, the department asserts release of the submitted photograph would create a substantial threat of physical harm to the officer in question. Based on these representations, we agree release of the submitted photograph would create a substantial threat of physical harm to the officer at issue. Therefore, the department must withhold the submitted photograph under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.¹

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 604103

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.