



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 26, 2016

Ms. Cynthia Tynan  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2016-09375

Dear Ms. Tynan:

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# 608026 (OGC No. 167657).

The University of Texas Medical Branch at Galveston (the "university") received a request for information responsive to a previous request for documents related to the acquisition of human fetal tissues or cadavers from Planned Parenthood Federation of America or its affiliated/subsidiary bodies. 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.

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-22753 (2015). In that ruling, we determined the university must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. You state there has been no change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the university must rely on Open Records Letter No. 2015-22753 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to

same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments against disclosure of the submitted information, which was not subject to the prior ruling.

Next, you state the university previously released the submitted information. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the university may not now withhold any of the submitted information that was previously released unless release of such information is expressly prohibited by law or the information is confidential by law. You seek to withhold the previously released information under sections 552.101 and 552.151 of the Government Code. Because sections 552.101 and 552.152 make information confidential by law for purposes of section 552.007, we will consider the university's arguments under these sections for the previously released information. *See* Gov't Code §§ 552.101, .152; *see also* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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. The university claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with 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.

Upon review of the submitted arguments and information, we find the university has satisfied the requirements established by the Texas Supreme Court's physical safety exception to required disclosure. Accordingly, the university must withhold the names and contact information of the individuals at issue in the submitted information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.<sup>1</sup> The university must release the remaining information.

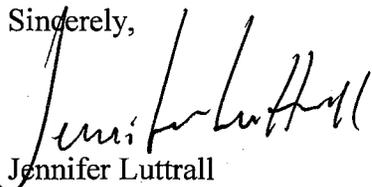
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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 608026

Enc. Submitted documents

c: Requestor  
(w/o enclosures)