



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2016

Ms. Leslie O. Haby
Assistant Criminal District Attorney
Civil Section
County of Bexar
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205-3030

OR2016-27182

Dear Ms. Haby:

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# 636969.

The Bexar County Sheriff's Office (the "sheriff's office") received a request for employee photographs of four named individuals. The sheriff's office states it will release some information. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.119 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses 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 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 sheriff's office states the officer depicted in the submitted photograph is now employed by the federal government in an undercover capacity. The sheriff's office contends disclosure of the submitted photograph would endanger the physical safety of the officer. Upon review, we find the sheriff's office has demonstrated the release of the submitted photograph would create a substantial threat of physical harm to the officer. Accordingly, the sheriff's office 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 636969

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address the sheriff's office's remaining argument against disclosure.