



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 14, 2017

Ms. Alexis G. Allen  
Counsel for City of Red Oak  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard Street  
Dallas, Texas 75201

OR2017-03303

Dear Ms. Allen:

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# 646309 (ORR# 82156).

The City of Red Oak (the "city"), which you represent, received a request for the following information pertaining to city employees: name; title or position; primary location; e-mail address; date of birth; date of hire; and salary. The city states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the claimed exceptions 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. This section encompasses 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, LP. & Hearst Newspapers, LLC*, 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 the *Cox* decision, 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 that “vague assertions of risk will not carry the day.” *Id.* at 119. The city states the submitted information includes the names of undercover officers and asserts release of this information would jeopardize their safety and place their lives in danger. Upon review, we conclude the city must withhold the information it has marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.


Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov't Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The city asserts the submitted dates of birth of city employees are confidential under section 552.102(a). However, as discussed above, the names of some of these employees must be withheld under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. Because these employees have been de-identified, the privacy interests in their dates of birth are sufficiently protected, and the city may not withhold them under section 552.102. Nevertheless, we agree the city must withhold the remaining dates of birth, which we have marked, under section 552.102(a) of the Government Code.

To conclude, the city must withhold the information marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The city must also withhold the information we have marked under section 552.102(a) of the Government Code. The city must release the remaining information.

Finally, although the city requests a previous determination regarding the dates of birth of city employees, we decline to issue one at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



James T. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 646309

Enc. Submitted documents

c: Requestor  
(w/o enclosures)