



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 13, 2017

Ms. Lindsey Wolf
General Counsel
Office of the Secretary of State
P.O. Box 12697
Austin, Texas 78711-2060

OR2017-05237

Dear Ms. Wolf:

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# 648756.

The Secretary of State (the "secretary's office") received a request for the personal addresses for the 38 presidential electors and a second request for the names, personal telephone numbers, and personal e-mail addresses for the 38 presidential electors. You state you have released some information in response to the second request. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.137, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 52.137(a)-(c). Here, subsection (c) does not apply. Upon review, we find the secretary's office must withhold the submitted e-mail addresses under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure.¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by judicial decision and 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 secretary’s office argues the information you have marked is confidential under the common-law physical safety exception because release of the information may jeopardize the safety of the individuals at issue. You state, and provide documentation showing, the individuals at issue have received death threats in connection with their positions. Further, you note the secretary’s office released the address for the Republican Party of Texas, which you state serves as the business mailing address for the 38 presidential electors. Upon review we find the secretary’s office has demonstrated that release of the information we have marked would create a substantial threat of physical harm to the individuals. Accordingly, the secretary’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.² However, the secretary’s office has not demonstrated the release the remaining information would subject anyone to a specific risk of harm. Accordingly, the secretary’s office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov’t Code § 552.152. You argue the remaining information should be withheld under section 552.152 of the Government Code. Upon review, we find you have failed to demonstrate the release of the information at issue would subject an employee or officer to a substantial risk of physical harm. Accordingly, the secretary’s office may not withhold the remaining information under section 552.152 of the Government Code.

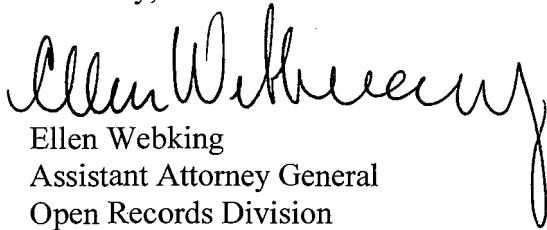
²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue.

In summary, the secretary's office must withhold the submitted e-mail addresses under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure. The secretary's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The secretary's office must release the remaining 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, 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 648756

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)