



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 12, 2017

Ms. Kristie L. Lewis
Staff Attorney
Houston Police Department
1200 Travis, 21st Floor
Houston, Texas 77002-6000

OR2017-12847

Dear Ms. Lewis:

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# 661447 (ORU No. 17-2706).

The Houston Police Department (the "department") received fifteen requests from the same requestor for four categories of information pertaining to department vehicles. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find portions of the submitted information consist of motor vehicle record information. Accordingly, the

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.²

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.

Id. § 552.152. You inform us some of the submitted information pertains to vehicles that may be used in undercover law enforcement operations. You state “release of the information that identifies unmarked vehicles . . . would likely cause the officers involved in these [undercover] investigations to face imminent threat of physical danger.” Therefore, we find section 552.152 is applicable to the information that identifies unmarked vehicles. As we are unable to determine which of the vehicles are used in undercover operations, we must rule conditionally. To the extent the information we have marked pertains to vehicles used in undercover operations, the department must withhold this information under section 552.152 of the Government Code. If the vehicles at issue are not used in undercover operations, we find you have failed to demonstrate this and the remaining information would subject a department employee or officer to a substantial threat of physical harm; thus, the department may not withhold this information under section 552.152 of the Government Code.

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 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. We understand you to contend release of the remaining information would endanger the safety of law enforcement personnel. However, upon review, we find you have failed to demonstrate release of any portion of the remaining information would create a substantial threat of physical harm to department personnel. Accordingly, the department may not withhold any of the remaining information

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


under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

In summary, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. To the extent the information we have marked pertains to vehicles used in undercover operations, the department must withhold this information under section 552.152 of the Government Code. The department 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/bw

Ref: ID# 661447

Enc. Submitted documents

c: Requestor
(w/o enclosures)