



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2018

Ms. Sylvia McClellan
Assistant City Attorney
City of Dallas
1400 South Lamar, 6FL, 6W
Dallas, Texas 75212

OR2018-01324

Dear Ms. McClellan:

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# 692352 (ORR #s D001438-102017 & D002142-103017).

The Dallas Police Department (the "department") received two requests from different requestors for specified categories of information pertaining to department officers. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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. Section 552.101 encompasses the common-law physical safety exception. For many years,

¹We note the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because the exceptions you claim can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

²We 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 those records contain substantially different types of information than that submitted to this office.

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 *Cox*, 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. You state the information at issue identifies undercover officers. You explain the release of identifying information of the undercover officers would jeopardize their safety. Based on your representations and our review, we agree the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. Upon review, however, we find the department has failed to demonstrate disclosure of the remaining information at issue would create a substantial threat of physical harm to an individual. Therefore, the department may not withhold the remaining information you 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 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 department asserts the submitted dates of birth of department employees are confidential under section 552.102(a). However, we note 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 department may not withhold them under section 552.102. Nevertheless, we agree the department must withhold the remaining dates of birth, which it marked, under section 552.102(a) of the Government Code.

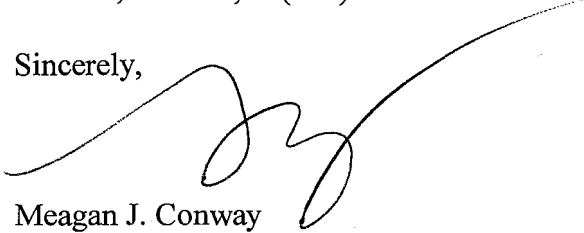
In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law physical safety

exception. With the exception of the dates of birth belonging to de-identified employees, the department must withhold the employees' dates of birth it marked under section 552.102(a) 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/sb

Ref: ID# 692352

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)