



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 22, 2018

Ms. Elizabeth Reynolds  
Paralegal  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2018-01366

Dear Ms. Reynolds:

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# 689534.

The City of Dallas (the "city") received a request for specified communications regarding confederate monuments. The city states it is withholding some of the requested information in accordance with Open Records Letter No. 2017-27373 (2017). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the claimed exception and reviewed the submitted information.

The submitted information contains e-mail addresses of members of the public. 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

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<sup>1</sup>The city acknowledges, and we agree, it did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, because sections 552.101 and 552.137 of the Government Code make information confidential, they can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987). Thus, we will consider the applicability of sections 552.101 and 552.137 to the information at issue.

address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The city does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the submitted e-mail addresses of members of the public under section 552.137 of the Government Code.<sup>2</sup>

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 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The city informs us it formed the Confederate Monuments Task Force (the “task force”) to address the removal of a Robert E. Lee monument located in a city park. The city asserts the remaining contact information of members of the task force is confidential under common-law privacy. However, upon review we find the city has failed to establish any of the remaining information it has marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, none of the submitted information is confidential under common-law privacy, and the city may not withhold any of it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses the common-law physical safety exception. The Texas Supreme Court has recognized a separate common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, LP. & Hearst Newspapers, LLC*, 343 S.W.3d 112, 117 (Tex. 2011) (holding “freedom from physical harm is an independent interest protected under law, untethered to the right of privacy”). 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.* at 118. The city asserts, “[i]n light of the fear, panic, and threats of physical harm that have taken place as a result of the removal of the Robert E. Lee monument, . . . the task force members could face harassment, and physical harm” if their contact information is released. However, we conclude the city has failed to demonstrate release of any of the remaining information it has marked, which consists of telephone numbers of members of the task force, would subject anyone to a specific risk of harm. Accordingly, the sheriff's office may not withhold any of this information on that ground.

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<sup>2</sup>As our ruling is dispositive, we do not address the other argument of the city to withhold this information.

In summary, the city must withhold the submitted e-mail addresses of members of the public under section 552.137 of the Government Code. The city 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](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 L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tdw

Ref: ID# 689534

Enc. Submitted documents

c: Requestor  
(w/o enclosures)