



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2019

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2019-19022

Dear Ms. Parker:

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# 775201.

The Texas Department of Transportation (the "department") received two requests from the same requestor for all records related to a named former department employee, including disciplinary actions, and specified policies and procedures. The department states it is releasing some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted representative sample of information.¹

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. 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, L.P. & Hearst Newspapers*,

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

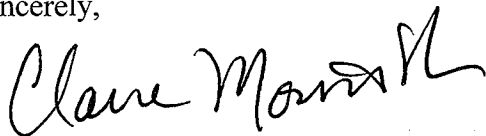
L.L.C., 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119.

The department argues the submitted information is excepted under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The department states the submitted information “pertains to threats of violence” and argues release of the information would “jeopardize the safety of [department] employees and create a substantial threat of physical harm.” Upon review, we conclude the department has demonstrated the applicability of the common-law physical safety exception to a portion of the submitted information, which we have noted. Accordingly, the department must withhold the information we noted under section 552.101 of the Government Code on that basis. However, the department has made only vague assertions of risk of harm that could result from the disclosure of any of the remaining information at issue. Thus, the department has not demonstrated release of any of the remaining information at issue would subject anyone to a specific risk of harm. Accordingly, the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Ref: ID# 775201

Enc. Submitted documents

c: Requestor
(w/o enclosures)