



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 30, 2019

Ms. P. Armstrong  
Assistant City Attorney  
City of Dallas  
1400 South Lamar Street, 6<sup>th</sup> Floor, 6W  
Dallas, Texas 75215

OR2019-30655

Dear Ms. Armstrong:

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# 793986 (ORR# D020890-071919).

The City of Dallas (the "city") received a request for the calendar of a named city official for a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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

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<sup>1</sup> We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because sections 552.101 and 552.152 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider whether these exceptions apply to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>2</sup> We assume that 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.

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 assert the submitted information includes specific dates and activities of the department's chief of police. You state release of the submitted information would "enable the development of a pattern of life analysis that could jeopardize the safety and wellbeing" of the named official. Upon review, we find section 552.152 applies to some of the information at issue. Accordingly, the city must withhold the information we marked under section 552.152 of the Government Code. However, we find you failed to demonstrate the release of the remaining information at issue would subject an employee or officer to a substantial risk of physical harm. Accordingly, the city may not withhold any of the remaining 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." 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, 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.

You argue the remaining information is excepted under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. However, upon review, we conclude you failed to demonstrate release of any of the remaining information would subject the named official to a specific risk of harm. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

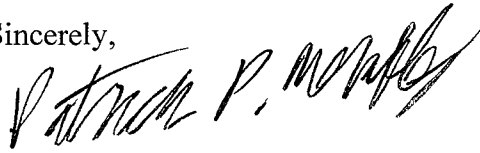
In summary, the city must withhold the information we marked under section 552.152 of the Government Code. The city must release the remaining information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick P. Mehaffy". The signature is written in a cursive, somewhat stylized font.

Patrick P. Mehaffy  
Assistant Attorney General  
Open Records Division

PPM/be

Ref: ID# 793986

Enc. Submitted documents

c: Requestor  
(w/o enclosures)