



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 25, 2019

Ms. P. Armstrong  
Assistant City Attorney  
City of Dallas  
Criminal Law and Police Section  
1400 South Lamar, 6<sup>th</sup> Floor 6W  
Dallas, Texas 75215

OR2019-33252

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# 798373 (ORR# D024733-082119).

The Dallas Police Department (the "department") received a request for calendar entries for the chief of police on specified dates. The department claims 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 claimed exception and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-30655 (2019). We have no indication the law, facts, or circumstances on which the prior

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<sup>1</sup> We note the department 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 552.152 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider whether the submitted information must be withheld under the Act on those grounds.

<sup>2</sup> We 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.

ruling was based have changed. Accordingly, the department must rely on Open Records Letter No. 2019-30655 as a previous determination and withhold or release the identical information in accordance with that ruling.<sup>3</sup> We will address the department's arguments against the release of the submitted information not encompassed by Open Records Letter No. 2019-30655.

Section 552.152 of the Government Code provides as follows:

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.

Gov't Code § 552.152. The department states the submitted information includes specific dates and activities of the chief of police. The department asserts release of the submitted information would "enable the development of a pattern of life analysis that could jeopardize the safety and wellbeing of the chief of police[.]" Upon review, we find section 552.152 applies to some of the information at issue. Accordingly, the department must withhold the information we marked under section 552.152 of the Government Code. However, we find the department has failed to demonstrate the release of the remaining information would subject an employee or officer to a substantial risk of physical harm. Accordingly, the department 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. Upon review, we conclude the department has failed to demonstrate release of any of the remaining information would subject the chief of police to a specific risk of harm. Accordingly, the department 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.

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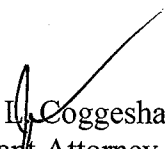
<sup>3</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

In summary, the department must rely on Open Records Letter No. 2019-30655 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must withhold the information we marked 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 <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,



James I. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/rm

Ref: ID# 798373

Enc. Submitted documents

c: Requestor  
(w/o enclosures)