



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2022

Ms. Priscilla de Mata
Counsel for the Canutillo Independent School District
Blanco Ordonez Mata & Wechsler, P.C.
5715 Cromo Drive
El Paso, Texas 79912

OR2022-07460

Dear Ms. Mata:

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# 935360.

The Canutillo Independent School District (the "district"), which you represent, received two requests from different requestors for information pertaining to book challenge committees. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The district seeks to withhold the submitted information under section 552.152 of the Government Code. Section 552.152 provides,

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 district asserts release of the submitted information would subject the employees at issue to a substantial threat of physical harm. Upon review, we find the district has failed to demonstrate the release of the submitted information would subject an employee to a substantial risk of physical harm. Therefore, the district may not withhold any portion of the submitted information under section 552.152 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by judicial decision and the common-law physical safety exception. For many years, 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, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112 (Tex. 2011). 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 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 find you have failed to demonstrate release of any of the submitted information would create a substantial threat of physical harm to an individual. Therefore, the district may not withhold any portion of the submitted information under section 552.101 in conjunction with the common-law physical safety exception. The district must release the submitted 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/ba

Ref: ID# 935360

Enc. Submitted documents

c: Requestor
(w/o enclosures)