KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 22, 2022

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
1400 Botham Jean Boulevard
Dallas, Texas 75215

OR2022-08241

Dear Ms. Silver:

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# 938716 (ORR# D042322).

The Dallas Police Department (the "department") received a request for information pertaining to the calendar and work schedule of the city's chief of police for January of 2022. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code.[1] We have considered the claimed exceptions and reviewed the submitted information.

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.

[1] 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, 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.

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 have marked under section 552.152 of the Government Code.[2] 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.

In summary, the department must withhold the information we have 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

[2] As our ruling is dispositive, we do not address the other argument of the department to withhold this information.

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ba

Ref: ID# 938716

Enc. Submitted documents

c: Requestor
(w/o enclosures)