



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2022

Mr. Joe D. Gonzales
Criminal District Attorney
Bexar County
101 West Nueva Street
San Antonio, Texas 78205

OR2022-18463

Dear Mr. Gonzales:

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# 955990 (ORR# 22-0253).

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to shift schedules of prosecutors working at the city magistrate's office, including prosecutor names, titles, and contact information. The district attorney's office claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the district attorney's office submitted shift schedules, but none of the remaining requested information. Thus, we find the submitted information is not representative of the information that the requestor seeks. Please be advised, this open records letter ruling applies only to the type of information the city has submitted for our review. This ruling does not authorize the city to withhold any information that is substantially different from the type of information the city submitted to this office. *See* Gov't Code § 552.302. Accordingly, to the extent the responsive prosecutor names, titles, and contact information were located in any other document in the possession of the district attorney's office when it received the request, we assume the district attorney's office has released that information to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If the district attorney's office has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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. This section encompasses the common-law physical safety exception that the Texas Supreme Court recognized in *Texas Department of Public Safety v. Cox Texas Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 117 (Tex. 2011) (“freedom from physical harm is an independent interest protected under law, untethered to the right of privacy”). In the *Cox* decision, the Supreme Court recognized, for the first time, a common-law physical safety exception to required disclosure. *Cox*, 343 S.W.3d at 118. Pursuant to this common-law physical safety exception, the court determined “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 district attorney’s office asserts release of the submitted information would subject to the prosecutors at issue to a substantial threat of physical harm. Upon review, we agree the district attorney’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 955990

Enc. Submitted documents

c: Requestor
(w/o enclosures)