



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 17, 2022

Mr. Frank J. Garza  
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San Antonio, Texas 78126-5511

OR2022-31814

Dear Mr. Garza:

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# 977890.

The Brownsville Public Utilities Board ("BPUB"), which you represent, received a request for specified information pertaining to named employees, including salaries. BPUB claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 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. Upon review, we find BPUB has failed to establish release of the information at issue would subject an

individual to a substantial risk of physical harm. Accordingly, BPUB may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 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. Upon review, we find BPUB has failed to demonstrated release of the information at issue would subject an employee or officer of BPUB to a substantial threat of physical harm. Therefore, BPUB may not withhold any of the submitted information under section 552.152 of the Government Code. Accordingly, BPUB 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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jxd

Ref: ID# 977890

Enc. Submitted documents

c: Requestor  
(w/o enclosures)