



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 21, 2011

Ms. Mary Salluce  
Open Government Attorney  
Texas Department of Family and Protective Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2011-13638

Dear Ms. Salluce:

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# 430762.

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to the requestor's termination of employment. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You state portions of the responsive information are excepted from disclosure pursuant to a previous determination issued by this office to the department in Open Records Letter No. 2003-5590 (2003). That ruling serves as a previous determination under section 552.301(a) of the Government Code and allows the department to withhold records concerning an investigation of alleged abuse or neglect of a child and the records used or developed in providing services as a result of such an investigation under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, unless the department's rules permit the release of the requested records to a particular requestor. You argue portions of the submitted information consist of names of, and statements from, clients involved in department investigations of alleged child abuse and neglect or information obtained by the department while providing services as a result of such investigations. You further state this information is not subject to release pursuant to the

department's rules. *See* 40 TAC §§ 700.201-.207. Therefore, to the extent any portion of the submitted information was obtained in the course of an investigation of alleged abuse or neglect of a child or was used or developed in providing services as a result of such an investigation, the department must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code pursuant to Open Records Letter No. 2003-5590. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests). However, to the extent the submitted information was not either obtained in the course an investigation of alleged abuse or neglect of a child or used or developed in providing services as a result of such an investigation, the department may not withhold such information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 552.101 encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. You claim the remaining information is excepted from required disclosure under section 552.101 in conjunction with common-law privacy and "special circumstances" because release of the information would likely cause someone to face an imminent threat of physical danger.

For many years, this office determined section 552.101 of the Government Code, in conjunction with the common-law right to privacy, protects 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 recently 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.*, 54 Tex. Sup. Ct. J. 1428, 2011 WL 2586861 at \*4 (Tex. July 1, 2011) (holding "freedom from physical harm is an independent interest protected under law, untethered to the right of privacy"). 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 \*5. 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 that “vague assertions of risk will not carry the day.” *Id.* at \*6.

You state the remaining information demonstrates a “pattern of behavior” on the part of the requestor, including “threatening co-workers and clients, a propensity for violence and unpredictable anger.” Thus, you state providing the requestor with the information at issue would “exacerbate an already volatile situation.” Upon review, we find you have made only vague assertions of risk of harm if the information at issue is released. Accordingly, we find you have not established disclosure of this information would create a substantial threat of physical harm to any individual, and 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, to the extent any portion of the submitted information was obtained in the course of an investigation of alleged abuse or neglect of a child or was used or developed in providing services as a result of such an investigation, the department must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code pursuant to the previous determination issued in Open Records Letter No. 2003-5590. The remaining information must be released.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ms. Mary Salluce - Page 4

Ref: ID# 430762

Enc. Submitted documents

c: Requestor  
(w/o enclosures)