



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2011

Ms. Tiffany Bull
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
Post Office Box 1065
Arlington, Texas 76004-1065

OR2011-18547

Dear Ms. Bull:

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# 439957 (Arlington Reference No. 5486).

The Arlington Police Department (the "department") received a request for information pertaining to a specified 9-1-1 telephone call. You claim that the submitted information is exempted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "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 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. We understand you to claim the submitted information is

¹Although you also raised section 552.108 of the Government Code in your initial brief to this office, you have not submitted arguments explaining how section 552.108 applies to the submitted information; therefore, you have waived your arguments under that exception. *See* Gov't Code §§ 552.301, .302.

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.*, 343 S.W.3d 112 (Tex. 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 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 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 119.

You state the submitted information involves a 9-1-1 caller who reported abusive behavior by her husband, the requestor. You state the requestor seeks the submitted information to locate the caller. Thus, you state providing the requestor with the submitted information would put the caller in danger and violate her privacy interests. Upon review, we find you have made only vague assertions of risk of harm if the submitted information 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 submitted information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. As you raise no other exceptions to disclosure, the submitted 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, 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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 439957

Enc. Submitted documents

c: Requestor
(w/o enclosures)