



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2012

Ms. Sylvia McClellan  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2012-10899

Dear Ms. McClellan:

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# 459296 (DPD Request 2012-05084).

The Dallas Police Department (the "department") received a request for the detail sheets for the narcotics and vice units for May 2010, March 2011, and March 2012. You claim a portion of the requested information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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 right to privacy. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Indus.*

---

<sup>1</sup>We understand you to raise section 552.152 based on the content of your arguments.

<sup>2</sup>We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

*Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See id.* 681-82.

You assert the identities of the officers in the submitted information are confidential pursuant to common-law privacy and “special circumstances.” You state the officers work in an undercover capacity and release of the information you have marked would place the officers’ lives at risk. However, the Third Court of Appeals ruled the “special circumstances” exception found in past Attorney General Open Records Decisions directly conflicts with Texas Supreme Court precedent regarding common-law privacy. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 287 S.W.3d 390, 394-95 (Tex. App.—Austin 2009, pet. granted). The court of appeals ruled the two-part test set out in *Industrial Foundation* is the “sole criteria” for determining whether information can be withheld under common-law privacy. *Id.*; *see also Indus. Found.*, 540 S.W.2d at 686. In this instance, the information at issue consists of identities of undercover officers. Upon review, we find this information is not highly intimate or embarrassing. As you have failed to meet the first prong of the *Industrial Foundation* test for privacy, we conclude the identities of the undercover officers are not confidential under common-law privacy and the department may not withhold the information at issue under section 552.101 on that basis.

Section 552.152 of the Government Code provides:

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.

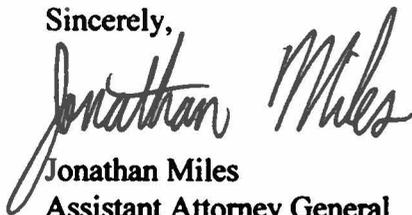
Gov’t Code § 552.152. In this instance, you state the release of the identities of the undercover officers would subject them to a substantial threat of physical harm. Based on your representations and our review, we conclude the department must withhold the information you have marked under section 552.152 of the Government Code. 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,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned above the typed name.

**Jonathan Miles**  
**Assistant Attorney General**  
**Open Records Division**

JM/bhf

Ref: ID# 459296

Enc. Submitted documents

c: Requestor  
(w/o enclosures)