



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2012

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County Criminal District Attorney
401 West Belknap, Ninth Floor
Fort Worth, Texas 76196-0201

OR2012-11959

Dear Ms. Fourt:

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# 459103.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received a request for the dates of employment, titles and positions held, win-loss record, types of cases handled, employment application, internal disciplinary records, letters of recommendation, and any other available information pertaining to a named former employee of the district attorney's office. We note you have redacted portions of the submitted information under section 552.117(a)(1) of the Government Code, as permitted by section 552.024(c) of the Government Code.¹ In addition, we note you have redacted a driver's license number under section 552.130 of the Government Code.² Although you take no position as to whether the remaining information is excepted under the Act, you state you have notified the named former employee of the request for information. We have received

¹Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. Gov't Code § 552.117(a). Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See id.* § 552.024(c)(2).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) of the Government Code without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

comments from the former employee, as well as the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we address the former employee's assertion that the requested information constitutes records of the judiciary. The Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). The Act does not apply to records of the judiciary. *See id.* § 552.003(1)(B) (definition of "governmental body" under Act specifically excludes the judiciary). Information that is "collected, assembled or maintained by or for the judiciary" is not subject to the Act. *Id.* § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) ("function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act."). In this instance, the district attorney's office maintains the information at issue. Accordingly, we find the requested information does not constitute records of the judiciary and is therefore subject to the Act.

Next, we address the former employee's claim that the district attorney's office need not comply with the request pursuant to section 552.028 of the Government Code. Section 552.028 provides, in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). The former employee states the requestor is on probation, but was not incarcerated at the time of the request. As the requestor was not imprisoned or confined in a correctional facility at the time of the request, we conclude section 552.028 is not applicable in this instance.

Next, we must address the district attorney's office's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply not later than the tenth business day after the date of receiving the request. Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You state, and the request reflects, the district attorney's office received the request for information on March 29, 2012. You state the district attorney's office was closed April 6, 2012. Accordingly, the district attorney's office's ten and fifteen-business-day deadlines were April 13, 2012 and April 20, 2012, respectively. The district attorney's office requested a ruling from this office via a letter meter-marked May 7, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the district attorney's office failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). The former employee raises sections 552.101, 552.102, 552.117, 552.1175, 552.119, 552.130, 552.137, and 552.152. Because these sections can provide compelling reasons to withhold information, we will consider their applicability to 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. The former employee asserts the submitted information is confidential pursuant to 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 former employee contends the requestor in this instance has acted in an increasingly erratic, unstable, and threatening manner towards the former employee and his family. The former employee informs us he has filed an incident report with his local sheriff’s office, and has requested additional protections at his current job, including bullet proof glass. The former employee states that the requestor has approached him and his family at public events, and that “[p]olice and security had to escort both [the former employee] and [his] family at events because of [the requestor’s] harassment and intended intimidating tactics.” Upon review, we find the release of the submitted information would create a substantial threat of physical harm to the former employee. Accordingly, 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.³

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/dls

³As our ruling is dispositive, we need not address the former employee’s remaining arguments against disclosure.

Ref: ID# 459103

Enc. Submitted documents

c: Requestor
(w/o enclosures)