



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 24, 2012

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2012-13509

Dear Ms. Byles:

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# 461568.

The City of Fort Worth (the "city") received a request for the construction plans for a specified address. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of three third parties. Accordingly, you notified the third parties of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received comments from a representative of one of the third parties, Planned Parenthood of North Texas, Inc. ("PPNT"). We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume that 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.

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. Section 552.101 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.

PPNT explains the requested information consists of detailed construction plans for a new PPNT facility. PPNT states, and provides a declaration from its security manager affirming, there are “widespread and near-constant threats to the well-being of those working for or with Planned Parenthood or coming to Planned Parenthood for health care assistance[.]” PPNT also states there is “recent evidence of the very real threat of violence that would flow from publication of the requested information.” This recent evidence includes two attacks involving explosives at similar Planned Parenthood facilities less than a year ago. PPNT’s security manager explains that release of the construction plans for the facility at issue would make available the full details of the facility’s electrical wiring and outlets, security cameras, plumbing and ventilation systems, level of fire protection, and the locations of alarm systems and other security. PPNT asserts release of this information would create “a substantial risk of physical harm to those persons (staff, providers, patients, construction workers, security personnel, and others) who will be using or somehow present at the south Fort Worth clinic of Planned Parenthood.” Upon review, we find PPNT has met its burden under the common-law physical safety exception. Accordingly, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.<sup>2</sup>

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.

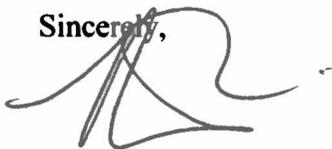
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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<sup>2</sup>As our ruling is dispositive, we need not address the city’s or PPNT’s remaining arguments against disclosure.

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,



**Nneka Kanu**  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 461568

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)

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