



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2012

Mr. George E. Hyde
Denton, Navarro, Rocha & Bernal, P.C.
2500 West William Cannon, Suite 609
Austin, Texas 78745

OR2012-13621

Dear Mr. Hyde:

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# 463245.

The City of Carrollton (the "city"), which you represent, received a request for "Law Enforcement Incident Histories" related to specified addresses. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Although you raise section 552.108(a)(2), you do not state any of the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.301(e)(1)(A). Thus, we conclude you have not established any of the submitted information is excepted from release on that ground.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim the submitted information is excepted from required disclosure under section 552.101 of the Government Code in conjunction with common-law privacy and "special circumstances." For many years, this office determined section 552.101, in conjunction with the common-law right to privacy, protected 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 has 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, 117 (Tex. 2011) (“freedom from physical harm is an independent interest protected under law, untethered to the right of privacy”). Instead, in the *Cox* decision, 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, “vague assertions of risk will not carry the day.” *Id.* at 119.

You argue the disclosure of the submitted information would likely cause the requestor’s neighbors to face an imminent threat of physical danger because of the requestor’s history of harassment and violence towards individuals, including the requestor’s neighbors. Upon review, we find you demonstrated release of the some of the information at issue would create a substantial threat of physical harm to the individuals at issue. Accordingly, the city must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.¹ However, we find you have failed to demonstrate the release of the remaining information would subject any individual to a substantial threat of physical harm. Therefore, the city may not withhold any of the remaining information under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses the informer’s privilege, which has long been recognized by Texas courts. *E.g.*, *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer’s privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer’s identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer’s privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the

¹As our ruling is dispositive, we do not address your other arguments to withhold this information.

informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

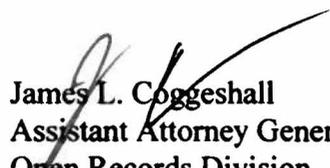
You state the remaining information must be withheld pursuant to the informer's privilege "in order to preserve the anonymity of citizens reporting criminal conduct, so that such resident [sic] will be encouraged to perform the obligation." However, you do not inform us what criminal or civil statute were reported to have been violated, nor do you explain how the city is responsible for enforcing any such statutes. Nevertheless, some of the remaining information itself reveals individuals reporting to the police possible violations of criminal laws. Thus, the city may withhold the identifying information of these complainants, which we marked, under section 552.101 in conjunction with the informer's privilege.² However, we conclude you have not established any of the remaining information identifies complainants for purposes of the informer's privilege. Thus, the city may not withhold any of the remaining information under section 552.101 on that ground.

To conclude, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. The city must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

²As our ruling is dispositive, we do not address your other arguments to withhold this information.

Ref: ID# 463245

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**