

December 18, 2012

Ms. Myrna S. Reingold  
Assistant County Attorney  
Galveston County  
722 Moody, 5th Floor  
Galveston, Texas 77550-2317

OR2012-20409

Dear Ms. Reingold:

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# 475473.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for information pertaining to promotions made by, or under the command of, a named individual. You state some information has been released. You state the sheriff's office will withhold the marked social security numbers as permitted by section 552.147(b) of the Government Code.<sup>1</sup> You claim some of the remaining submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code.<sup>2</sup> We have considered the claimed exceptions and reviewed the submitted information.

Section 552.152 of the Government Code provides:

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b). Therefore, we do not address your remaining arguments against this information.

<sup>2</sup>Although you also raise section 552.1175, we note section 552.117 is the proper exception to raise for information pertaining to peace officers employed by the sheriff's office.

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 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.

*Id.* § 552.152. You inform us a portion of the submitted information reveals the identities of undercover police officers. You state release of this information would subject these officers to a substantial threat of physical harm. Based on your representations and our review, we conclude you have demonstrated release of the information we have marked would subject the officers to a substantial threat of physical harm. Therefore, the department must withhold the information we have marked under section 552.152. However, we find you have not demonstrated how release of the remaining information would subject officers to a substantial threat of physical harm. Therefore, none of the remaining information may be withheld under section 552.152.

You claim some of the remaining information is protected under section 552.101 of the Government Code in conjunction with the common-law physical safety exception 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 (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, “vague assertions of risk will not carry the day.” *Id.* at 119. You argue the disclosure of the remaining information concerning undercover officers “would subject them to imminent threat of physical danger.” We note the remaining information consists only of non-identifying administrative information concerning promotion of the individuals at issue. Upon review, we conclude you have made only vague assertions of risk of harm that could result from the disclosure of this information. Accordingly, the sheriff’s office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

In summary, the sheriff's office must withhold the information we have marked under section 552.152 of the Government Code. The remaining information must be released to the requestor.

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,

Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/som

Ref: ID# 475473

Enc. Submitted documents

c: Requestor  
(w/o enclosures)