



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2014

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2014-01647

Dear Ms. Armstrong:

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# 513453 (DPD ORR# 2013-13288).

The Dallas Police Department (the "department") received a request for specified categories of information pertaining to pending criminal investigations at a specified address since November 13, 2008. The department claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Initially, we note some of the information you have submitted to us for review, including the names of undercover officers, is not responsive to the request for information because the requestor specifically excluded such information from the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information in response to this request.

¹We 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 those records contain substantially different types of information than that submitted to this office.

See Econ. Opportunities Dev. Corp. v. Bustamante, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted responsive information relates to a pending criminal investigation. Based on this representation, we conclude the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ refused n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the submitted responsive information under section 552.108(a)(1) of the Government Code.²

You indicate some of the responsive basic information is excepted from disclosure under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. 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, LP. & Hearst Newspapers, LLC*, 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

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

afforded” law enforcement experts regarding the probability of harm, but further cautioned that “vague assertions of risk will not carry the day.” *Id.* at 119.

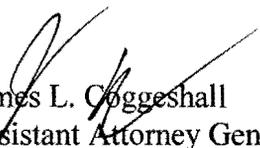
We understand you to assert release of some of the responsive basic information “could jeopardize the safety and well-being of [undercover] officers and the confidential informants used by [the department].” However, upon review, we find the department has not established release of any of the responsive basic information would place an individual in imminent danger of physical harm. Therefore, the department may not withhold any of the responsive basic information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

To conclude, the department must release the responsive basic information from the submitted documents. However, it may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 513453

Enc. Submitted documents

c: Requestor
(w/o enclosures)