



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2014

Mr. Marc J. Schnall
Attorney for City of Hill Country Village
Langley & Banack
Trinity Plaza II
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2014-11054

Dear Mr. Schnall:

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# 530779.

The City of Hill Country Village (the “city”), which you represent, received a request for any police reports, statements, photographs, or descriptions that led to certain identified citations. You state you will release some information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.108, 552.130, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal case. Thus, we find the release of the information you have marked would interfere with the detection, investigation, and prosecution of a crime. *See*

¹We 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.

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 ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we conclude section 552.108(a)(1) is applicable, and the city may withhold the information you have marked under section 552.108(a)(1).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov’t Code § 552.101. This section encompasses the common-law physical safety exception. 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 state release of the information you have marked, which identifies undercover police officers, would jeopardize the safety and well-being of the officers. Upon review, we find disclosure of the information you have marked would create a substantial threat of physical harm. Therefore, the city must withhold the identities of the undercover police officers, which you have marked, under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.³

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³ As our ruling is dispositive for this information, we need not address your argument against its disclosure.

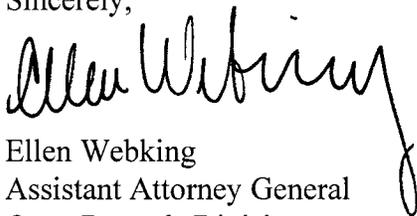
identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. Accordingly, the city must withhold the driver's license information you have marked under section 552.130 of the Government Code.

In summary, the city may withhold the information you have marked under section 552.108 of the Government Code. The city must withhold the identities of undercover police officers you have marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The city must withhold the driver's license information you have marked pursuant to section 552.130 of the Government Code. The remaining information must be released.⁴

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/eb

Ref: ID# 530779

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ We note the information being released includes a social security number. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).