



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2014

Mr. Andrew Warthen
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205

OR2014-21123

Dear Mr. Warthen:

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# 543735.

The Bexar County District Attorney's Office (the "district attorney's office") received a request for (1) specified categories of information pertaining to assistant district attorneys during a specified time period and (2) travel expense and personal office expense records for the named district attorney during a specified time period.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹You state the district attorney's office sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²We 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.

Initially, we note the district attorney's office has only submitted the named district attorney's travel expense records during the specified time period. To the extent information responsive to the remainder of the request existed on the date the district attorney's office received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information made confidential by judicial decision and the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). 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 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 the named district attorney has received numerous threats on her life and physical safety, and release of the submitted information would allow an individual to "devise a pattern of [the named district attorney's] likely destinations" and harm the named district attorney. However, upon review, we conclude you have failed to demonstrate the applicability of the common-law physical safety exception to any of the submitted information. Accordingly, the district attorney's office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] 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.

Gov't Code § 552.152. You state the release of the submitted information would allow an individual to "devise a pattern of [the named district attorney's] likely destinations" and harm the named district attorney. However, upon review, we find you have failed to demonstrate the release of the submitted information would subject an employee to a substantial risk of physical harm. Accordingly, the district attorney's office may not withhold any of the submitted information under section 552.152 of the Government Code. As no further exceptions against disclosure have been raised, the submitted information must be released.

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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 543735

Enc. Submitted documents

c: Requestor
(w/o enclosures)