

NO. D-1-GN-19-008222

CITY OF DALLAS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF TRAVIS COUNTY, TEXAS
	§	
KEN PAXTON,	§	
ATTORNEY GENERAL OF TEXAS,	§	
	§	
Defendant.	§	345TH JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE COURT:

The City of Dallas, Plaintiff, hereby files its original petition in the above-styled and number cause, challenging an open records ruling of Ken Paxton, Attorney General of Texas, Defendant. Plaintiff would show the following:

1. Plaintiff pleads that discovery, if any is appropriate, should be governed by a Level 2 discovery control plan, as provided in Texas Rule of Civil Procedure 190.3.
2. Plaintiff is a Texas home-rule municipality with its principal office in Dallas County. The open records requestor, Shawn Shinneman, is not a party to this suit. Texas Government Code section 552.325 gives Shinneman the right to intervene in this suit or to choose not to participate in this suit. Defendant is the Attorney General of Texas and may be served at his office address, Price Daniel, Sr. Building, Sixth Floor, 209 W. 14th Street, Austin, Texas 78701.
3. On August 21, 2019, Plaintiff received from Shinneman a request for “Mayor Eric Johnson’s calendar from the day he was inaugurated as mayor through the end of the year, updated through the day this request is filled.” A copy of that request is attached hereto as Exhibit 1 and is incorporated herein by reference.

4. In observance of Labor Day, Plaintiff was closed on September 2, 2019.

5. On September 5, 2019, Plaintiff sent Defendant a letter asking whether some of the requested information is subject to required public disclosure under chapter 552. Plaintiff included with the September 5 letter to Defendant a copy of Shinneman's request for information, which contained evidence sufficient to establish the date Plaintiff received Shinneman's request for information; and Plaintiff stated in the letter the date of its receipt of the request for information. Also on September 5, 2019, Plaintiff sent to Shinneman a copy of the September 5 letter to Defendant. A copy of the September 5 letter to Defendant is attached hereto as Exhibit 2 and is incorporated herein by reference.

6. On September 12, 2019, Plaintiff sent Defendant a letter containing comments stating the reasons why some of the requested information is excepted from required public disclosure under Government Code section 552.101 in conjunction with the doctrine of common-law privacy. Plaintiff forwarded along with the September 12 letter a copy of the requested information (or representative samples thereof). Also on September 12, 2019, Plaintiff sent to Shinneman a copy of the September 5 letter to Defendant. A copy of the September 12 letter to Defendant is attached hereto as Exhibit 3 and is incorporated herein by reference.

7. Defendant assigned identification number 796251 to the August 21 request for an attorney general ruling. On November 15, 2019, Plaintiff received Defendant's decision, number OR2019-31858. Defendant in part noted that Plaintiff had redacted certain portions of the documents containing the submitted information and ruled that the City must release the redacted information pursuant to Government Code section 552.302. Defendant also concluded that some of the requested information is subject to required public disclosure under chapter 552.

8. Plaintiff sues Defendant for a judgment determining that the redacted information does not constitute public information, and that the requested public information is excepted from required public disclosure.

WHEREFORE, Plaintiff prays that Defendant be cited to appear and answer herein and that on final hearing Plaintiff have a judgment determining that the information at issue does not constitute public information and granting Plaintiff its costs and all other relief to which Plaintiff may be entitled.

Respectfully submitted,

CHRISTOPHER J. CASO
Interim City Attorney

/s/ Taylor Floyd
Taylor Floyd (Lead Attorney)
Texas Bar No. 24109873
taylor.floyd@dallascityhall.com
James B. Pinson
Texas Bar No. 16017700
james.pinson@dallascityhall.com
Assistant City Attorneys

Dallas City Attorney's Office
1500 Marilla Street, Room 7DN
Dallas, Texas 75201
Telephone: 214-670-3519
Telecopier: 214-670-0622

COUNSEL FOR PLAINTIFF

Open Records Request (C007761-082119)

Open Records Request Details

Please be as specific as possible, including dates, names, numbers, or other identifiers that will assist in locating the information you seek. Examples: "I hereby request the following documents [document name/type] on [event, project, incident, etc.]. "I need Police report [number], dated [date], and involving [description and date]". "I am requesting a certificate of occupancy for [X address]."

Describe the document(s) you are requesting: • Mayor Eric Johnson's calendar from the day he was inaugurated as mayor through the end of the year, updated through the day this request is filled.

Date or Date Range: Please provide the date or date range of your specific records request.

Preferred Method to Receive Documents: Digital via Dallas Open Records Center - (Please note: All records may not be available electronically)

Department with Record(s)

Office Use Only

Child Request Creation

Notes

Message History

Date

On 8/21/2019 11:56:51 AM, System Generated Message:

Subject: Open Records Request :: C007761-082119

Body:

Dear Shawn Shinneman:

Thank you for your interest in public records of the City of Dallas. Your request has been received and is being processed in accordance with Chapter 552 of Texas Government Code, the Public Information Act. Your request was received in this office on 8/21/2019 and given the reference number: C007761-082119 for tracking purposes.

Records Requested: • Mayor Eric Johnson's calendar from the day he was inaugurated as mayor through the end of the year, updated through the day this request is filled.

Your request will be sent to the relevant City department(s) to locate the information and determine any costs that may be due. You will receive an email when your request has been completed. If your request is received on the weekend or after business hours, it will be processed the next business day.

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed. Again, thank you for using the Public Records Center.

City of Dallas

To monitor the progress or update this request please log into the Public Records Center.

Date

On 8/21/2019 11:56:49 AM, Shawn Shinneman wrote:
Request was created by customer

Request Details

Reference No: C007761-082119
Create Date: 8/21/2019 11:56 AM
Update Date: 9/5/2019 1:59 PM
Completed/Closed: No
Required Completion Date: 9/5/2019

Status: Processing
Priority: Priority - 0
Assigned Dept: City Secretary's Office
Assigned Staff: Parris Long

Customer Name: Shawn Shinneman
Email Address: shawn.shinneman@dmagazine.com
Phone: 2145400126
Group: City

Source: Web



CITY OF DALLAS

September 5, 2019

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for an Open Records Decision

Dear Open Records Division:

By electronic submission (Exhibit A) received by the City of Dallas ("city") on August 21, 2019, Shawn Shinneman requested information pertaining to specified records.

In observance of Labor Day, the city was closed September 2, 2019.

The city is gathering the requested information and it is anticipated that some of the requested information will be exempt from mandatory disclosure under the Public Information Act, Chapter 552, Texas Government Code (the "Act"). Since we have not been able to review all the requested information, we would assert that certain information contained in Shawn Shinneman's request may be protected from disclosure under Sections 552.101 through 552.154 of the Act. In particular section 552.101. Under Section 552.301 of the Act, this office now seeks your determination about whether this information is exempt from disclosure.

Our comments stating the reasons why the Act exempts the requested information from disclosure, and copies of the requested information (or samples if voluminous), will be sent to your office by September 12, 2019, as required by Section 552.301(e) of the Act.

If you have any questions regarding this request for an open records decision, please contact me at (214) 670-3742.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Parris Long'.

Parris Long
Open Records Coordinator
Open Records Center, City Secretary's Office

Exhibit 2

Attachments

c: Bilierae Johnson, City Secretary
Camelia Taylor, Administrative Specialist

Shawn Shinneman
Via GovQA



CITY OF DALLAS

September 12, 2019

Honorable Ken Paxton
Attorney General of Texas
300 W. 15th Street
Clements Building, 12th Floor
P.O. Box 12548
Austin, Texas 78711

Re: Request for an Open Records Decision

Dear Attorney General Paxton:

On September 5, 2019, the city of Dallas (“city”) made a request for an open records decision regarding a request by Shawn Shinneman.

This office is responsible for representing the legal interests of the city. Our previous submission is incorporated into this submission, including Mr. Shinneman’s request. In our opinion, the requested information is excepted from required public disclosure under Section 552.101 of the Public Information Act, Chapter 552, Texas Government Code (the “Act”). Under Section 552.301 of the Act, this office now seeks your determination about whether this information is exempt from disclosure.

The information in Exhibit B consists of a representative sample of the requested information that we believe is exempt from disclosure under Section 552.101 of the Act, which exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 of the Act encompasses the doctrine of common-law privacy. For information to be protected from public disclosure under the common law right of privacy, the information typically must meet the criteria set out in Industrial Found. v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976). Under ordinary circumstances, via common law privacy, information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* However, in Open Records Letter Ruling 2008-10779, your office determined that “information may be withheld under section 552.101 in conjunction with common-law privacy upon a showing of ‘special circumstances.’” See Open Records Decision No. 169 (1977). “Special circumstances” refers to situations where release of the requested information would endanger the personal safety of public employees; such would be a “clearly unwarranted invasion of privacy.” Open Records Decision No. 123 (1976).

In ORL 2008-10779, the Office of the Governor argued that the information contained on the Governor’s calendar where “the subject matter of some events inherently reveals the time and location of the event” must be withheld from public disclosure because “the privacy rights of the Governor include the right to be safe from physical harm.” The Office of the Governor further explained that “by providing a schedule to the requestor with the location and times redacted, the order of (the Governor’s)

September 12, 2019
Honorable Ken Paxton
Page 2

day would still be revealed” and “by doing research to determine the location and time of each item on the schedule, combined with the order of his day being revealed, it would be very easy to determine where (the Governor) would be at any given time.” *Id.* Your office agreed that by release of the information at issue, the Governor would face an imminent danger of physical harm, and accordingly, the information must be withheld from public disclosure under Section 552.101 of the Act in conjunction with the special circumstances doctrine of common-law privacy. Accordingly, the documents were withheld in their entirety, since a partial redaction (for instance time and location) could still allow for the missing information to be deduced with some research. *Id.*

This request is for the Mayor of Dallas’ calendar, inclusive of all information contained thereon. As such, we believe that our situation is analogous to that of the Office of the Governor in that by revealing the whereabouts of the Mayor including time, place, subject matter, or any combination thereof could easily be used by a savvy would-be wrongdoer to cause physical harm to the Mayor or his family by determining his patterns, whereabouts, and plans. This includes past appointments, since this could reveal meetings and events that are regularly attended by the Mayor. In order to protect the Mayor from facing an imminent threat of physical harm, we believe that the Mayor’s calendar information must be withheld in their entirety pursuant to the doctrine of special circumstances under the umbrella of the common-law privacy exception, Section 552.101 of the Texas Public Information Act.

If you have any questions, please contact me at 214-670-3519.

Respectfully submitted,



SUNNY TRIPP
Assistant City Attorney

Attachments

c: (with all Exhibits)
Parris Long, City Secretary’s Office

(with Exhibit A only)
Tammy Palomino, Chief of the General Counsel Division
Mary Elbanna, Office of the Mayor

Shawn Shinneman
Via GovQA



KEN PAXTON
ATTORNEY GENERAL OF TEXAS



November 12, 2019

Ms. Sunny Tripp
Assistant City Attorney
City of Dallas
1500 Marilla, 7DN
Dallas, Texas 75201

019-20967

OR2019-31858

Dear Ms. Tripp:

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# 796251 (ORR# C007761).

The City of Dallas (the "city") received a request for the city's mayor's calendar during a specified time period. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted representative sample of information.¹

Initially, we note the city has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). We have no indication the city has been authorized to withhold the redacted information without seeking a ruling from this office. *See id.* § 552.301(a); *see also* Open Records Decision 673 (2000). As such, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we are unable to discern the nature of the redacted information. Consequently, the city has failed to comply with section 552.301 of the Government Code as to this information, and this information is presumed public under section 552.302 of the Government Code. Accordingly, the city must release the redacted information pursuant to section 552.302 of the Government Code.

¹ We 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.

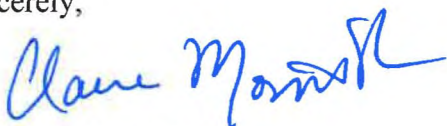
Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the common-law physical safety exception. The Texas Supreme Court has recognized a separate common-law 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 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.

We understand the city to argue the remaining information is excepted under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. Upon review, we conclude the city has not demonstrated release of any of the information at issue would subject anyone to a substantial threat of physical harm. Accordingly, the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The city must therefore release the submitted information in its entirety.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 796251

c: Requestor