



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 2, 1994

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR94-056

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ We assigned your request ID# 22972.

You indicate that the Department of Public Safety has received a request for a copy of a particular videotape recording in the custody of the department. Specifically, the requestor seeks "a copy of the videotape made by DPS troopers on November 27 depicting the arrest of four men by the Medina County Sheriff's Office and/or other agencies near the intersection of U.S. 90 and FM 1250 in Medina County." You have submitted the requested videotape to us for review and contend that it is excepted from disclosure by section 552.119 of the Act.²

Section 552.119 provides:

- (a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²In your original request letter to this office, you also raised sections 552.103 and 552.108 of the act. You have subsequently informed us that there is no longer a pending state prosecution or federal investigation concerning the incidents depicted on the videotape. Therefore, you have withdrawn your claims under these two sections, and we need not address them.

which would endanger the life or physical safety of the officer, is excepted from the requirements of Section 552.001 unless:

(1) the officer is under indictment or charged with an offense by information;

(2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or

(3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

In Open Records Decision No. 502 (1988), this office declared that this section "protects from required disclosure all photographs of peace officers unless the circumstances in subsections [(1), (2) and/or (3) of section 552.119] occur or the peace officer gives written consent to release as provided in section [552.119(b)]." All but one of the peace officers depicted on the videotape at issue here have consented to the release of the tape in accordance with subsection 552.119(b).³ None of the situations described in subdivisions (1)-(3), *supra*, are applicable to the tape in question.

We have reviewed the videotape and note that it is of poor quality. The tape depicts several persons, some of whom appear to be peace officers as defined by article 2.12, Code of Criminal Procedure. The events recorded took place at night, however, with only the light provided by automobile headlights. In addition, the camera appears to have been located at some distance from the site of the incident. While it is possible to determine, particularly with the knowledge provided by hindsight, that some sort of confrontation is occurring, the quality of the tape does not permit identification of individual peace officers.

A photograph that does not depict an *identifiable* peace officer is not a "photograph" for purposes of section 552.119. Regardless of the scope of the term "photograph" in section 552.119, and whatever requirement may exist with regard to the editing of a "photograph", we can state with confidence that section 552.119 does not permit the withholding of any category of information in which the peace officer in question is not identifiable. As the images of the peace officers on this tape do not permit

³We note that we have never considered whether section 552.119 acts to except from disclosure a photograph of a *group* of peace officers where, as here, only *one* of the officers has refused to consent to its release — particularly where it may be possible for the governmental body to edit out the image of the nonconsenting officer. However, we need not address this issue in this ruling, given our finding that the peace officers in this instance are unidentifiable.

the identification of such officers, section 552.119 does not authorize the withholding of those images.

We recognize the considerable public interest in the information before us. The manner in which peace officers perform their law enforcement duties is of special concern to the public, given the authority and power the public has entrusted to its police force and the serious consequences that result when that trust is abused. We conclude that section 552.119 does not except the requested information from required public disclosure, and the department must release the videotape in its entirety.

Because case law and prior open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Open Government Section

RG/GCK/rho

Ref.: ID# 22972

Enclosure: Submitted information

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