



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 16, 1997

Ms. Elaine S. Hengen
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR97-1401

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 107169.

The City of El Paso (the "city") received a request for the police identification photos of David Chavez and Jose Galvan. You assert that the requested information is excepted from required public disclosure by section 552.119 of the Government Code.

Government Code section 552.119 reads as follows:

(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 which would endanger the life or physical safety of the officer, is excepted from the requirements of Section 552.021 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 gives written consent to the disclosure.

You inform us that Mr. Chavez and Mr. Galvan are former El Paso Police Department officers who were arrested for abuse of official capacity. You state that as of April 24, 1997, the El Paso County District Attorney has not filed an information or indictment against either of the former officers. You also state that as of April 24, 1997, both men are licensed with the Texas Commission on Law Enforcement Officer Standards and Education as Texas peace officers in good standing.

As Mr. Chavez and Mr. Galvan have resigned from the El Paso Police Department, we have no basis to conclude that they are police officers as defined in article 2.12 of the Code of Criminal Procedure. The question then becomes whether section 552.119 applies to the photographs of former peace officers.

The purpose of section 552.119 is two-fold: to protect peace officers from life-threatening harassment since release of their photographs might target them for criminal reprisal, and to insure that such protection is effective by removing from the custodian of the photograph the discretion to release it by conferring that discretionary power solely on the peace officer who is the subject of the photograph. *See* Open Records Decision Nos. 536 (1989), 502 (1988) (Construing predecessor statute). We believe that the purposes of section 552.119 are served by applying the statute to the photograph of a former peace officer. The threat of criminal reprisal does not cease when the officer resigns or is terminated. We, therefore, conclude that the city may not release the requested photographs unless the officers give their written consent for such release in accordance with section 552.119(b) of the Government Code or one of the exceptions in section 552.119 applies.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 107169

Enclosure: Submitted document

cc: Mr. Zoltan Csanyi
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(w/o enclosure)

