Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 7, 1998

Ms. Katheryn H. West
Assistant City Attorney
City of Dallas
Municipal Building
Dallas, Texas 75201

OR98-2975

Dear Ms. West:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 120050.

The City of Dallas Police Department (the "department") received a request for "all photographs taken by your department at the scene of a fatal accident on 7/22/98." In response to the request, you submit to this office for review a representative sample of the information at issue.[1] You claim that the requested information is excepted from disclosure under section 552.119 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Based on the department's brief to this office and the requestor's letter, it appears that the department did not seek an open records decision from this office within the statutory ten *business* day deadline. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.119 provides such a compelling reason. *See* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

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[1]We 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.

Section 552.119 excepts from public disclosure a photograph of a peace officer,[2] that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (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. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The submitted copies of photographs depict a peace officer and it does not appear that any of the exceptions are applicable. Therefore, unless the officer consents to the release, we agree that you may withhold the photographs under section 552.119, but only to the extent that the photographs depict the police officer in a manner that he could be identified. The department must release the remaining portions of the photographs to the requestor.

We are resolving this matter with an 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 should 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,

Sam Haddad

Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref: ID# 120050

Enclosure: Submitted document

cc: Mr. J.W. Jack Murray, Jr.
Legal Investigator
3942 Rochelle
Dallas, Texas 75220
(w/o enclosure)

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[2]"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.