



November 4, 2002

Mr. Eddie Martin
Assistant City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2002-6277

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171680.

The City of Denton (the "city") received three requests from the same requestor for photographs of specified employees, the entire contents of these employees' personnel files, and any records relating to cases filed in Municipal Court over the last six months. You state that the requestor has narrowed his requests for information and that most of the responsive information will be made available to the requestor, including the requested photographs of all members of the City Attorney's office. However, you claim that the requested photographs of Code Enforcement employees are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

The purpose of the law enforcement exception is to prevent law enforcement and crime prevention techniques from being readily available to the public at large. *See* Open Records Decision Nos. 133 (1976), 127 (1976); *see also Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied). It is not, however, a catch-all provision that law enforcement agencies may use to withhold all matters from public disclosure. Although you state that the release of the photographs in question “would interfere with the investigation, detection, and prosecution of crime,” you have not provided specific arguments explaining how the release of the photographs of Code Enforcement officers, which you state are not certified peace officers, would interfere with law enforcement or prosecution of crime. Thus, you may not withhold the submitted photographs under section 552.108.

Additionally, you raise concerns regarding the safety of those employees depicted in the submitted photographs. You state that the release of these photographs could “cause uneasiness . . . and create potential dangers greater than those that currently exist.” However, information may only be withheld if the governmental body can demonstrate that its release would likely cause an imminent threat of harm. *See* Open Records Decision No. 169 (1977) (under Gov’t Code § 552.101 information may be withheld from public disclosure in special circumstances in which release of information would cause imminent threat of harm). In this case, you have not demonstrated that the release of these photographs would place the Code Enforcement employees in imminent physical danger. Thus, you may not withhold the employees’ photographs due to safety concerns. As you raise no other exceptions with respect to the submitted photographs, this information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt