



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 8, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2003-0157

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174698.

The Austin Police Department (the "department") received a request for "a list of all officers with name, badge number and photo." You claim that the requested information is excepted from disclosure under sections 552.108 and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that section 552.022 of the Government Code makes certain information expressly public, unless it is confidential under other law. One category of expressly public information under section 552.022 is "the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]" Gov't Code § 552.022(a)(2). Thus, section 552.022(a)(2) requires the release of the requested names of police officers unless that information is expressly confidential under other law. Although you claim that the names of police officers are excepted from disclosure under section 552.108 of the Government Code, this exception is a discretionary exception to disclosure that does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision No. 586 (1991) (governmental body may waive section 552.108). Accordingly, the department may not withhold the names of police officers from disclosure under section 552.108 of the Government Code, and they must be released.

¹Because the request for information seeks the name, badge number, and photographs of the officers with the department, we will only address the applicability of the Public Information Act (the "Act") in regard to this information. Any additional information submitted to this office by the department is non-responsive to the request for information. Therefore, we will not address the applicability of the Act to it and it need not be released.

In regard to the non-section 552.022 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). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Although you state that the release of the badge numbers in question "would interfere with the detection, investigation, or prosecution of crime," you have not provided specific arguments explaining how the release of the badge numbers in this instance would interfere with law enforcement or prosecution of crime. Thus, you may not withhold the submitted badge numbers under section 552.108, and they must be released.

Further, you assert section 552.119 of the Government Code in regard to the submitted photographs. Section 552.119 excepts from public disclosure a photograph of a peace officer² 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

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

under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). You state that none of the exceptions are applicable and that the peace officers have not executed any written consent to disclosure. Thus, you must withhold these photographs pursuant to section 552.119 of the Government Code.

In summary, we conclude that: 1) you must withhold the submitted photographs pursuant to section 552.119 of the Government Code; and 2) you must release the requested names and badge numbers of police officers.

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).

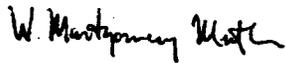
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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

Ref: ID# 174698

Enc: Submitted documents

c: Dr. Don Hermes
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(w/o enclosures)