



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 11, 2006

Ms. Mary J. Ibarra  
Assistant Criminal District Attorney  
Bexar County District Attorney's Office  
300 Dolorosa, Suite 4049  
San Antonio, Texas 78205-3030

OR2006-10520

Dear Ms. Ibarra:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 258902.

The Bexar County District Attorney's Office (the "district attorney") received a request for the most recent photograph of a named former Bexar County Sheriff's Office deputy. 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.

Section 552.119 of the Government Code provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or

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

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

Gov't Code § 552.119. In this instance, you explain that the former deputy whose photograph you seek to withhold is currently working in the district attorney's office. You have submitted an affidavit from the former deputy in which he states that his current duties require him to contact hostile witnesses. The former deputy further states that, "due to the nature of [his] job duties, release of [his] photograph would endanger [his] life or physical safety . . . ." Thus, we find that you have demonstrated the applicability of section 552.119 to the photograph at issue. Furthermore, none of the exceptions to section 552.119 appear to apply. Therefore, the district attorney must withhold the submitted photograph under section 552.119.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/dh

Ref: ID# 258902

Enc. Submitted documents

c: Mr. Maro Robbins  
San Antonio Express-News  
P.O. Box 2171  
San Antonio, Texas 78297  
(w/o enclosures)