



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2007

Mr. Rashaad Gambrell
Assistant City Attorney
City of Houston
PO Box 368
Houston, Texas 77001-0368

OR2007-09569

Dear Mr. Gambrell:

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# 285594.

The Houston Police Department (the "department") received a request for "[p]hotos of all [department] officers, except those in intelligence gathering or undercover operations." You state that "photographs of the chief of police, executive assistant chiefs, assistant chiefs, and those officers who regularly appear before the media will be made available to the requestor." You claim that the submitted information is excepted from disclosure under sections 552.119 and 552.136 of the Government Code. We have considered your claimed exceptions and reviewed the submitted information.¹ We have also considered comments submitted by the requestor and the Houston Police Officers' Union. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Initially, we note that the employee identification numbers are not responsive to the instant request. Information that is not responsive to this request need not be released. Moreover, we do not address such information in this ruling.²

You claim that requested photographs are excepted from public disclosure under section 552.119 of the Government Code, which provides the following:

¹We 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.

²Thus, we need not address your arguments under section 552.136 of the Government Code.

(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. Under section 552.119, a governmental body must demonstrate that release of the photograph would endanger the life or physical safety of a peace officer.³ Furthermore, a governmental body may not withhold a photograph of a peace officer under section 552.119 if (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; (3) the photograph is introduced as evidence in a judicial proceeding; or (4) the officer gives written consent to the disclosure.

We acknowledge that our standard in regard to section 552.119 is that governmental bodies must provide specific arguments explaining how the release of officer photographs would endanger the life or physical safety of the officer. We rarely base our rulings on the scope of the information requested. However, based on the broad scope of this request, the department is required to compile the requested photographs in order to comply with the request. It is this compilation, we find, that will endanger the life or physical safety of the officers at issue. Accordingly, the department must withhold the requested compilation of photographs under section 552.119 of the Government Code.

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

³"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

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).

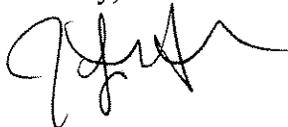
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/ma

Ref: ID# 285594

Enc. Submitted documents

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