



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2016

Mr. Kerry G. Tilley
Assistant City Attorney & Public Safety Legal Advisor
City of Amarillo
200 Southeast Third Avenue
Amarillo, Texas 79109

OR2016-11092

Dear Mr. Tilley:

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# 617050.

The Amarillo Police Department (the "department") received two requests from the same requestor for specified photographs of department police officers. You state the department will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.119 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because sections 552.101 and 552.119 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes, such as section 143.090 of the Local Government Code. You indicate the City of Mesquite is a civil service city under chapter 143 of the Local Government Code. Section 143.090 of the Local Government Code provides the following:

A department, [the Fire Fighters’ and Police Officers’ Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding; or
- (4) the officer gives written consent to the release of the photograph.

Local Gov’t Code § 143.090. You state photographs at issue depict department police officers. You do not inform us any of the police officers depicted in the photographs at issue have provided the department with written consent regarding the release of the photographs. You indicate none of the remaining exceptions under section 143.090 are applicable. Therefore, the department must withhold the photographs you have indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. As our ruling is dispositive we need not consider your remaining argument against disclosure.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with a prominent initial "N" and a stylized "Ybarra".

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bw

Ref: ID# 617050

Enc. Submitted documents

c: Requestor
(w/o enclosures)