



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 16, 1998

Mr. Saul Pedregon
Assistant City Attorney
City of Dallas
Criminal Law and Police Division
2014 Main Street, Room 206
Dallas, Texas 75201

OR98-1481

Dear Mr. Pedregon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116260.

The Dallas Police Department (the "department") received a request for the photograph of a retired police officer, the 1963 Yearbook of Dallas Police Officers, and any information to show where the retired officer was on November 22, 1963. You explain that the only responsive information that the department maintains is the photograph of the retired officer. You state that the remaining requested information either does not exist or is not in the department's custody. The Open Records Act does not require a governmental body to make available information which does not exist nor does it require a governmental body to prepare new information. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 (1992), 362 (1983). The department must, nevertheless, make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975); see Gov't Code § 552.353 (providing penalties for failure to permit access to public information). As for the responsive photograph, you claim that it is excepted from disclosure by section 552.119 of the Government Code. We have considered the exception you claim and have reviewed the photograph at issue.

Section 552.119(a) of the Government Code excepts from required public disclosure "a photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure," with certain exceptions that do not appear relevant here. A photograph that depicts a peace officer may be released only if the peace officer gives written consent to the disclosure. Gov't Code § 552.119(b). Consequently, unless the officer has given his written consent or is no longer living, you must withhold the photograph of the officer.

Open Records Decision No. 536 (1989) (provision which protects police officer's photograph ceases to apply after death of officer).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 116260

Enclosures: Submitted documents

cc: Mr. Clarence Otworth
P.O. Box 7035
Clearwater, Florida 33758
(w/o enclosures)