



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 8, 1998

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

OR98-3000

Dear Mr. Schnurr:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 120113.

The City of Dallas Police Department (the "department") received a request for "[c]omplete Internal Affairs Resumes Also complete Personnel files," for certain named officers. In response to the request, you submit to this office for review a representative sample of the information at issue. You state that "[i]n our opinion, portions of the information is [sic] protected and we are withholding portions of the requested documents," under sections 552.114 and 552.119 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Based on the department's brief to this office and the requestor's letter, it appears that the department did not seek an open records decision from this office within the statutory ten *business day* deadline. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of sections 552.114 and 552.119 provides such a compelling reason. *See* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

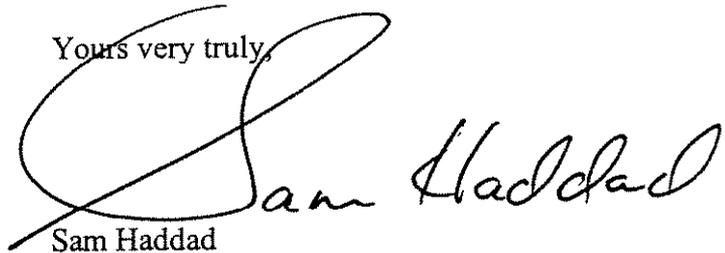
¹As you have not raised an applicable exception for a portion of the requested records, concerning Internal Affairs Division records, we assume that the responsive information, should it exist, will be released to the requestor. Because you have raised none of the act's other exceptions to public disclosure, any such records held by the department must be released unless confidential by law.

Section 552.119 excepts from public disclosure a photograph of a peace officer,² 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 under this section may be made public if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The submitted copy of a photograph depicts a peace officer and it does not appear that any of the exceptions are applicable. We agree that you must withhold the photograph under section 552.119, unless the officer consents to the release.

We next discuss the exception you raise under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and section 552.114 of the Government Code. This office has issued Open Records Decision No. 634 (1995), which concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. However, you have not submitted any argument nor is it apparent that the department is an educational institution. Accordingly, the transcript may not be withheld under FERPA. Furthermore, we note that the public has a legitimate interest in the job qualifications, including college transcripts of public employees and that college transcripts submitted by a public employee to a governmental body are not excepted by common law privacy. Open Records Decision No. 467 (1987).

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,

A large, stylized handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, sweeping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

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

SH/mjc

Ref.: ID# 120113

Enclosures: Submitted documents

cc: Mr. Lee A. Bush
Texas Peace Officer Association
401 Wynnewood Village
Dallas, Texas 75215-0305
(w/o enclosures)