



February 23, 1999

Ms. Deesha K. Brown
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-0523

Dear Ms. Brown:

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# 122528.

The City of Dallas Police Department (the “department”) received a request for “all photographs taken” by the Dallas County Vehicle Crime Unit, at the scene of a fatal accident on October 29, 1998. In response to the request, you submit to this office for review a representative sample of the information at issue.¹ You claim that the requested information is excepted from disclosure under section 552.119 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

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.

²Although you cite to sections 552.101 and 552.108, you did not explain how these exceptions apply to the information at issue, thus we will not to consider them. *See* Gov’t Code § 552.301(b); Open Records Decision No. 363 (1983). Chapter 552 of the Government Code places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Although you cite to sections 552.101 and 552.108, you did not explain how these exceptions apply to the information at issue, thus we will not to consider them. *See* Gov’t Code § 552.301(b); Open Records Decision No. 363 (1983). Chapter 552 of the Government Code places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974).

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 section 552.119 provides such a compelling reason. *See* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

Section 552.119 excepts from public disclosure a photograph of a peace officer,³ 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 only 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. Therefore, unless the officer consents to the release, we agree that you may withhold the photograph under section 552.119, but only to the extent that the photograph depicts the police officer in a manner that he could be identified. The department must release the remaining portions of the photograph or photographs to the requestor.

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.

Sincerely,

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

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

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

Ref: ID# 122528

Enclosure: Submitted document

cc: Mr. Mark Lesher
524 Spruce Street
Texarkana, Texas 75504
(w/o enclosures)