



March 17, 1999

Ms. Deesha K. Brown
Assistant City Attorney
Office of the City Attorney
Municipal Building
Dallas, Texas 75201

OR99-0757

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122884.

The Dallas Police Department (the “department”) received a request for, among other things, all photographs pertaining to a particular automobile accident. You contend that one of the requested photographs is excepted from disclosure under section 552.119 of the Government Code.¹

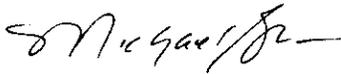
We note at the outset that the department received the open records request on December 3, 1998, but you did not request an open records decision from this office until December 23, 1998. Thus, it appears that you did not seek an open records decision from this office within ten business days of the department’s receipt of the request. *See* Gov’t Code § 552.301. Failure to timely request an open records decision from this office results in the legal 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 this presumption, 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 (the distribution of confidential information is a criminal offense).

¹We assume the department has released to the requestor all of the remaining requested information. If it has not, it must do so at this time.

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. Section 552.119 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 photograph at issue contains the depiction of a peace officer. Assuming none of the exceptions are applicable in this instance, we conclude that unless the officer consents to the release, the department must withhold the portion of the photograph that depicts the police officer in a manner that he could be identified. The department must release the remaining portions of the 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/RWP/ch

Ref.: ID# 122884

Enclosures: Submitted photograph

cc: Mr. George Rice
Rice Accident Investigation Consultants
1004 Craig Drive
Mesquite, Texas 75181
(w/o enclosures)

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