



December 10, 1999

Mr. Duncan R. Fox
Assistant Chief
Legal Services
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR99-3582

Dear Mr. Fox:

You have asked 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# 130552.

The Texas Department of Public Safety (the "department") received a request for "DPS videos # 98-066, # 98-199, # 98-257." In response to the request, you submit to this office for review the information which you assert is responsive. You claim that portions of the requested information is excepted from disclosure pursuant to section 552.119 of the Government Code. Specifically, the issue in the pending request pertains to the proper method of providing access to the requested videotapes, while withholding information subject to section 552.119 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

At the outset, we note that both the department and the requestor state that the requested information relates to a prior request from the same requestor. Open Records Letter No. 99-1834 (1999). In the previous ruling, this office concluded that the responsive information was excepted from disclosure under section 552.108(a)(1), because release of the information "would interfere with the detection, investigation, or prosecution of crime." Accordingly, you may rely on the conclusions reached in Open Records Letter No. 99-1834 to the extent the requested records overlap with any information which was the subject of our previous ruling.

Section 552.119 excepts from public disclosure a photograph of a peace officer,¹ 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

¹"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

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). You represent that portions of the responsive videotapes depict peace officers, and it does not appear that any of the exceptions are applicable. Therefore, unless the officers consent to the release, we agree that you may withhold the portion of the videotapes depicting a peace officer under section 552.119, but only to the extent that the peace officer is depicted in a manner that he or she could be identified.

Based on your brief to this office, we understand that the department is willing to release the requested information, however, you assert that the videotapes “need to be edited prior to their release,” in compliance with section 552.119. In fact, you have suggested two approaches for removing the peace officer images from the videotapes at issue. However, the requestor seeks to view the videotapes “in the presence of a DPS PIO [public information officer] who can obstruct the video screen at the time that any officer is present.”² Based on the application of section 552.119, we do not believe that the requestor’s suggestion that a “DPS PIO” can obstruct the peace officers’ image from a videotape is an adequate safeguard against the potential threat to “the life or physical safety of [an] officer.” Therefore, we conclude that the department is not required to comply with the requestor’s requested method of compliance with section 552.119. Although the department must withhold all portions of the videotape that contain the images of the peace officers, the remaining portions of the video must be released to the requestor. Accordingly, the videotapes may only be released once the department has reached an agreement with the requestor as to the method to successfully edit or redact the images of the officers.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

²We note that, generally, chapter 552 does not require the preparation of information in the form requested by a member of the public, unless the information exists in an electronic format. See Gov’t Code § 552.231; see also *id.* section 552.228 (regarding information in electronic format). We suggest that if you have any concerns over the costs associated with providing the requestor with the information at issue, with the peace officer images redacted, that you contact the Open Records Administrator for the General Services Commission. See Gov’t Code §§ 552.261-.273; but see Gov’t Code § 552.271 (governmental body, generally, may not charge for inspection of records).

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned above the typed name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 130552

Encl. Submitted videotape

cc: Mr. Brian Collister
Reporter, The Texas Network
1000 East 6th Street
Austin, Texas 78702
(w/o enclosures)