



July 14, 2000

Ms. Lan P. Nguyen  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2000-2653

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137053.

The City of Houston (the “city”) received a request for several categories of information, including photographs of certain police officers and other investigators. You state that most of the requested records will be released. You claim that the requested photographs are excepted from disclosure under sections 552.108 and 552.119 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.119 of the Government Code excepts from public disclosure “[a] photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure . . . the release of which would endanger the life or physical safety of the officer[.]” Gov’t Code § 552.119(a). This office has held that a claim under section 552.119 does not require a threshold showing that release of a photograph would endanger the officer depicted. *See* Open Records Decision No. 502 at 6-7 (1988). You inform us that three of the responsive photographs depict police officers. You have provided an affidavit that states that the police officers in question are peace officers under article 2.12 of the Code of Criminal Procedure. You also inform us that none of the situations that would permit the release of a photograph of a peace officer is present here. *See* Gov’t Code § 552.119(a)(1)-(3). Based on your representations and our review of the supporting affidavit and the submitted photographs, we conclude that the responsive photographs of police officers are excepted from disclosure under section 552.119.

You also seek to withhold responsive photographs of certain civilian investigators under section 552.108 of the Government Code, the “law enforcement” exception. Section 552.108 provides in relevant part that “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or

prosecution of crime is excepted from [required public disclosure] if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must reasonably explain, if the requested information does not do so on its face, how and why release of that information would interfere with law enforcement or crime prevention. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You inform us that the rest of the responsive photographs depict non-classified investigators employed in the Office of the Inspector General (the “OIG”) of the Houston Police Department. You state that, “[b]ecause of the shortage of personnel as well as the nature of the cases which require the OIG to use, at times, civilian employees in criminal enforcement duties . . . the [c]ity believes that disclosure of [their photographs] would interfere with . . . law enforcement investigative and prosecution efforts[.]” The affidavit that you submitted, which is signed by Lieutenant Leslie S. Mayo of the OIG, confirms that “the OIG has assigned to it civilian employees whose duties may include an active role in the actual investigation into criminal activity.” The affidavit also states that the OIG investigates allegations of misconduct by city employees, including cases in which a criminal act may have occurred. Lieutenant Mayo further explains:

The public release of the photo identification of our . . . investigators would clearly interfere with their law enforcement mission. Investigators assigned to the OIG who are commissioned peace officers are routinely assigned to conduct criminal investigations. Further, there are also investigators assigned to the OIG who, while not necessarily commissioned peace officers, may still fulfill a law enforcement function by playing an integral role in investigations which may result in the filing of criminal charges.

Making public the photographs of any of our investigators . . . could compromise an ongoing investigation, compromise an investigator’s safety or the safety of another witness in the investigation and could subject an investigator or witness to harassment or other attempts at intimidation.

In Open Records Decision No. 636 at 2 (1995), we stated that section 552.108(b) protects internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention; *see also* Open Records Decision No. 531 at 2 (1989) (endorsing same analysis under statutory predecessor to section 552.108). We find that you have demonstrated that the release of photographs of civilian investigators who are attached to the Office of the Inspector General would interfere with law enforcement and crime prevention. Accordingly, we conclude that those responsive photographs are excepted from disclosure under section 552.108(b)(1).

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.

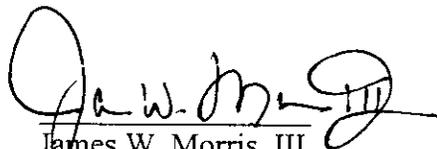
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,

  
James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ljp

Ref: ID# 137053