



September 26, 2000

Mr. Jeffrey L. Schrader
Assistant Criminal District Attorney
County of Bexar
Civil Section
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2000-3712

Dear Mr. Schrader:

You ask 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# 139420.

The Bexar County Sheriff's Department (the "department") received a request for "pictures of all of the department's officers who are now, or [have] in the past, been a party in a civil service hearing or case in arbitration in accordance with Section 552.119(a)(2) of the Government Code." You contend that section 552.119(a)(2) is not applicable to a photograph of a peace officer who is a party in a sheriff's department civil service hearing. You also assert that section 552.119(a)(2) is applicable only to a peace officer who is a party in an ongoing civil service hearing. You have submitted copies of photographs of officers who are parties in current or pending sheriff's department civil service hearings. You also have submitted a representative sample of photographs of officers who have been parties in closed or concluded hearings.¹ We have considered your arguments and have reviewed the information you submitted.

Section 552.119(a) of the Government Code excepts from disclosure "[a] photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure . . . the release

¹You inform us that the representative sample is inclusive of the period from January 1, 1999, to the date of your request for this ruling. You advise us that as the requestor does not specify a time frame, the department is attempting to determine the extent to which it maintains records of sheriff's department civil service hearings and photographs of peace officers who were parties in such cases. You assure us, however, that the submitted sample is representative of photographs of all officers who have been parties in civil service hearings. This letter ruling assumes that the submitted sample is truly representative of the requested information as a whole. This ruling neither addresses nor authorizes the department to withhold requested information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

of which would endanger the life or physical safety of the officer," unless one of three exceptions applies.² 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(b) provides that a photograph exempt from disclosure under section 552.119 may be made public only if the peace officer gives written consent to the disclosure. *See* Open Records Decision No. 502 (1988). You inform us that no current or former peace officer employed by the department has executed a written consent to the disclosure of his or her photograph.

In seeking to withhold all or a portion of the requested photographs of the department's officers under section 552.119, you make two alternative arguments. First, you direct our attention to the fact that section 552.119 refers to a photograph of a peace officer who is a party in a "fire or police civil service hearing." Gov't Code § 552.119(a)(2). You inform us that employees of the department are subject to a sheriff's department civil service system established under subchapter B of chapter 158 of the Local Government Code, Local Gov't Code § 158.031, *et seq.*, rather than to a municipal fire or police civil service system under chapter 143 of the Local Government Code. You contend that the use of the phrase "fire or police civil service hearing" clearly evinces a legislative intent to limit the applicability of section 552.119(a)(2) to officers who are employed by municipal fire or police departments. Based on your interpretation of section 552.119(a)(2), you argue that the requested photographs of officers who are or have been parties in sheriff's department civil service hearings are not subject to disclosure under section 552.119. Alternatively, you contend that as section 552.119(a)(2) refers to an officer who "is" a party in a civil service hearing, section 552.119(a)(2) is applicable only if an officer is a party to an ongoing hearing. Under your alternative argument, you seek to withhold photographs of officers who were parties in civil service hearings that have been closed or concluded.

We have carefully considered your contention that section 552.119(a)(2) does not encompass a photograph of a peace officer who is subject to a sheriff's department civil service system. We conclude, however, that the language of section 552.119(a)(2) does not establish that the legislature intended to exclude a peace officer from the ambit of section 552.119(a)(2) on the basis of the kind of civil service system to which the officer may belong. In reaching this conclusion, we note that while the legislature deliberately adopted the definition of peace officer under article 2.12 of the Code of Criminal Procedure in enacting section 552.119, there is no clear indication that the legislature's inclusion of the words "fire or police civil

²This office has determined that section 552.119 does not require a threshold showing that release of a photograph would endanger the officer whose image is depicted. *See* Open Records Decision No. 502 (1988).

service hearing” is a purposeful reference to chapter 143 of the Local Government Code. *See Grothues v. City of Helotes*, 928 S.W.2d 725 (Tex. App. -- San Antonio 1996, no writ) (rule of statutory construction that “expression of one implies exclusion of all others” should be applied with care when factually there is some evidence that legislature intended its application). Accordingly, we conclude that section 552.119(a)(2) is applicable to photographs of peace officers employed by the department.

With regard to your alternative argument, we agree that the use of the present tense “is” limits the application of section 552.119(a)(2) to a photograph of a peace officer involved in a current or pending hearing. Thus, we conclude that photographs of officers of the department who were parties to civil service hearings that have been closed or concluded are not encompassed by section 552.119(a)(2). Consequently, those requested photographs are excepted from disclosure under section 552.119(a). Pursuant to section 552.119(a)(2), photographs of officers who are parties in ongoing civil service hearings are not excepted from disclosure and must be released.

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.

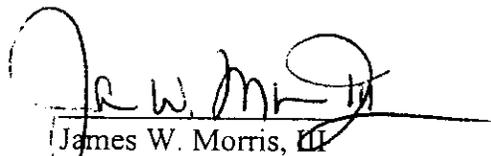
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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# 139420

Encl. Submitted documents

cc: Mr. Brian Collister
Reporter
KMOL-TV
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(w/o enclosures)