



June 22, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-2665

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148680.

The Department of Public Safety ("DPS") received a request for information about a particular individual's employment, including:

1. History of commendations
2. Photograph of [the individual]
3. Discipline records
4. History of positions held with the department
5. Copy of the probable cause affidavit for the search of [the individual's] safety deposit Box.

You state that DPS has no records that are responsive to request item numbers 3 and 5. You state that you are providing the requestor with copies of information that is responsive to request item numbers 1 and 4. You claim that the information responsive to request item number 2, the former employee's photograph, is excepted from disclosure under

section 552.119 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

In Open Records Letter No. 2001-2029 (2001), this office issued a "previous determination" that DPS may withhold peace officer photographs that are protected by section 552.119 without the need to request a decision from the attorney general. *See* Open Records Decision No. 673 at 7-8 (2001) (establishing criteria for a "previous determination"). You inform us that none of the exceptions apply; therefore, you must withhold it in this instance. Please note that, in the future, DPS need not request a decision from this office as to whether peace officer photographs that are protected by section 552.119 must be withheld.

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 Hadassah Schloss at 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,

A handwritten signature in black ink, appearing to read "Stephen P. Agan". The signature is fluid and cursive, with the first name "Stephen" and last name "Agan" clearly distinguishable.

Stephen P. Agan
Assistant Attorney General
Open Records Division