



August 28, 2001

Mr. Duncan R. Fox  
Deputy General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2001-3805

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151231.

The Texas Department of Public Safety (the "department") received a request for (1) pictures of a named trooper, and (2) information relating to commissioned department troopers who were convicted of a crime in the last five years. You indicate that you do not have information responsive to the second category of the request. Nevertheless, you indicate that you will release to the requestor a list of employees who have been charged with a crime in the past. With respect to the first category of the request, you claim that the responsive information is excepted from disclosure under section 552.119 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.119 of the Government Code provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [public disclosure] unless:

- (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.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

You correctly note that this office has issued a previous determination in Open Records Letter No. 2001-2029 (2001) allowing the department to withhold from future requestors “those portions of photographs of peace officers as defined by article 2.12 of the Code of Criminal Procedure . . . under section 552.119, provided: (a) the peace officer is not under indictment or charged with an offense by information; (b) the peace officer is not a party in a fire or police civil service hearing or a case in arbitration; (c) the photograph is not introduced as evidence in a judicial proceeding; or (d) the peace officer has not given written consent to disclosure.” However, you question whether section 552.119 and the previous determination apply where, as here, the peace officer in question was under indictment at one time, but was no longer under indictment at the time of the request for information. A peace officer’s photograph is not protected under section 552.119 if “the officer *is* under indictment or charged with an offense by information.” Gov’t Code § 552.119 (emphasis added). We apply section 552.119 to information under the circumstances as they exist with regard to the peace officer at the time of the request. *See, e.g.*, Open Records Decision No. 536 (1989) (section 552.119 does not except from disclosure photographs of peace officers who are deceased at the time of the request for information). Consequently, we interpret section 552.119(a)(1) to mean that a peace officer’s photograph is not excepted from disclosure under that section if the officer is under indictment or is charged with an offense by information at the time the governmental body receives the request for his photograph. Because the peace officer is no longer under indictment, section 552.119(a)(1) does not apply in this instance. Furthermore, because it does not appear that any of the other exceptions listed under section 552.119 apply in this instance, we find that the requested photographs are excepted from disclosure under section 552.119 and therefore 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); *Tex. Dep't of Pub. 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 151231

Enc. Submitted documents

c: Ms. Jenni Lee, News Reporter  
KBTX-TV  
P.O. Box 3730  
Bryan, Texas 77802  
(w/o enclosures)