



June 4, 2002

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2002-3016

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163828.

The City of Mesquite Police Department (the "department") received a request for photographs and reports pertaining to an automobile accident. You state that some responsive information has been released to the requestor. We note that your request for this decision does not address the request for information relating to "all supplemental [sic] pages or reports" pertaining to report no. 01000643, nor have you raised any exceptions to its disclosure. Therefore, we assume that, to the extent this information exists, it has been released to the requestor. If not, you must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). You claim that the requested photographs are excepted from disclosure under section 552.119 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You argue that section 552.119 excepts the requested photographs from public disclosure. Section 552.119 excepts from public disclosure a photograph of a peace officer² 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 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). The submitted copies of photographs depict peace officers and it does not appear that any of the exceptions are applicable. You have not informed us that the peace officers have executed any written consents to disclosure. Thus, we agree that the department must withhold the portions of the photographs depicting identifiable peace officers. The remaining portions of the photographs that do not depict peace officers must be released to the requestor.

Finally, you request that this office issue a "previous determination" that would permit the department in the future to withhold from disclosure photographs of peace officers without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time.

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

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 163828

Enc. Submitted documents

c: Mr. Vince Romo
519 I-30 #157
Rockwall, Texas 75087
(w/o enclosures)