



September 30, 2002

Ms. Linda L. Sjogren
Assistant City Attorney
City of San Angelo - Legal Department
P.O. Box 1751
San Angelo, Texas 76902

OR2002-5491

Dear Ms. Sjogren:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169907.

The City of San Angelo (the "city") received a request for a copy of a specified videotape. You claim that the submitted information is excepted from disclosure pursuant to section 552.119 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides in pertinent part that a governmental body that requests an attorney general decision with respect to requested information that it wishes to withhold from disclosure must state the exceptions to disclosure that apply to such information, within a reasonable time, but not later than the tenth business day after the date of receiving the written request. *See Gov't Code § 552.301(b)*. We note that we have no evidence that is sufficient to establish that the city requested this decision within ten business days of receiving the request. *See Gov't Code § 552.308*. Accordingly, we conclude that the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from our office regarding the requested information.

When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See Gov't Code § 552.302; see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ);

City of Houston v. Houston Chronicle Publ'g Co., 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). In such an instance, the governmental body must demonstrate a compelling interest in order to overcome the presumption and withhold the information at issue from disclosure. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Since the city claims that the information at issue is excepted from disclosure pursuant to section 552.119 of the Government Code, we will address the applicability of this exception to disclosure to the submitted information.

Section 552.119 of the Government Code excepts from disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies.¹ 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. *See* Gov't Code § 552.119(a). 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. *See* Open Records Decision No. 502 (1988). You state that none of the exceptions in section 552.119 apply in this instance and that none of the officers depicted in the videotapes have given consent to the release of the videotape. Accordingly, we conclude that the city must withhold from disclosure all depictions of peace officers on the submitted videotapes pursuant to section 552.119 of the Government Code. However, you state that it would be "extremely difficult to edit the tapes so as to release them or portions of them in a manner that would not reveal the officers' identities because of the practicality of editing the tape and because the confidential information is [inextricably] intertwined with other information." Based on our review of your representations and the videotapes in question, we agree. Accordingly, we conclude that the city must withhold the videotapes from disclosure in their entirety.

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

¹ The term "peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 169907

Enc. Submitted videotapes

cc: Mr. Ron Dooley, Sr.
314 West Harris
San Angelo, Texas 76903
(w/o enclosures)