The ruling you have requested has been amended as a result of litigation and has been attached to this document.

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2005

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P. O. Box 13247
Austin, Texas 78711

OR2005-05259

Dear Mr. Smith:

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# 226186.

The Texas Health and Human Services Commission (the "commission") received a request for copies of the job descriptions, identification badges, and peace officer certificates of two named commission employees. You inform us that you will release some information and that the department does not maintain some of the requested information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). You claim that the remaining requested 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, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:
>
> > (1) the officer is under indictment or charged with an offense by information;
> >
> > (2) the officer is a party in a civil service hearing or a case in arbitration; or

(3) the photograph is introduced as evidence in a judicial proceeding.

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

Gov't Code § 552.119.[1] In this instance, you have not demonstrated, nor is it apparent from our review of the submitted information, that release of the identification badge would endanger the life or physical safety of the officer depicted. We therefore determine that the department may not withhold any portion of the submitted records pursuant to section 552.119 of the Government Code. As you claim no other exceptions to disclosure, you must release the submitted information in its 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 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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[1]As amended by Act of April 22, 2005, 79th Leg., R.S., S.B. 148, ch. 8, § 1, 2005 Tex. Sess. Law Serv. (Vernon).

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,

José Vela III
Drafting Attorney
Open Records Division

JV/krl

Ref: ID# 226186

Enc. Submitted documents

c: Mike Hopkins
Rt. 1, Box 237
Jacksonville, Texas 75765
(w/o enclosures)

CAUSE NO. GN502233

TEXAS HEALTH AND HUMAN SERVICES COMMISSION, Plaintiff,	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, Defendant.	§	126th JUDICIAL DISTRICT

2005 DEC -6 PM 1:56
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for an agreed final judgment. Plaintiff Health and Human Services Commission (HHSC) and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Mike Hopkins, was sent reasonable notice of this setting and of the parties' agreement that HHSC may withhold the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, copy of the identification badge of a named certified peace

officer who is employed by HHSC, is excepted from disclosure by Tex. Gov't Code § 552.119.

2. HHSC may withhold from the requestor the requested identification badge of the named certified peace officer who is employed by HHSC.

3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 6 day of December 2005.

PRESIDING JUDGE

APPROVED:

KAREN PETTIGREW
Assistant Attorney General
Financial Litigation Division
Office of the Attorney General
William P. Clements Bldg., 8th Floor
300 W. 15th St.
Austin, Texas 78701
Telephone: 463-2018
Fax: 477-2348
State Bar No. 01529500
ATTORNEYS FOR PLAINTIFF

BRENDA LOUDERMILK
Chief, Open Records Litigation Section
Administrative Law Division
Office of the Attorney General
William P. Clements Bldg., 12th Floor
300 W. 15th St.
Austin, Texas 78701
Telephone: 475-4292
Fax: 320-0167
State Bar No. 12585600
ATTORNEY FOR DEFENDANT