



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2006

Mr. Randy A. Stoneroad
Police Legal Advisor
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2006-00838

Dear Mr. Stoneroad:

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# 240816.

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified incident.¹ You state that the department is providing the requestor with some responsive information. You claim, however, that some of the requested information is excepted from disclosure pursuant to section 552.119 of the Government Code.² We have considered the exception you claim and have reviewed the submitted information.

Initially, you inform this office that you previously asked for a decision about the requested Automatic Vehicle Locator ("AVL") records in response to another request for information. In Open Records Letter No. 2005-11121 (2005), we concluded that the department could withhold the requested AVL records under section 552.108(a)(1). Further, you do not indicate that any of the circumstances have changed. Therefore, as the four criteria for a

¹We note that the department sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²Although the department asserts that some of the information is excepted from disclosure under section 552.119 in conjunction with section 552.101 of the Government Code, we note that the exceptions in the Act are not law that makes information confidential for purposes of section 552.101.

“previous determination” established by this office in Open Records Decision No. 673 (2001) have been met, the department may withhold the requested AVL records in accordance with Open Records Ruling No. 2005-11121 (2005).³

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.119 of the Government Code. Section 552.119 excepts from public 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. Gov’t Code § 552.119. 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 excepted from disclosure under this section may be made public, only if the peace officer gives written consent to the disclosure. In this instance, you have not demonstrated, nor is it apparent from our review of the submitted information, that the release of any portion of the information would endanger the life or physical safety of any officer depicted in that information. Accordingly, we conclude that the department may not withhold any portion of the submitted information under section 552.119 of the Government Code.

In summary, the department may withhold the requested AVL records in accordance with Open Records Ruling No. 2005-11121 (2005). The remaining submitted information must be released.

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).

³The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

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).

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 Office of the Attorney General 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,



James Forrest
Assistant Attorney General
Open Records Division

JF/er

Ref: ID# 240816

Enc. Submitted documents

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(w/o enclosures)