



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2008

Mr. Joseph Harney
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2008-12651

Dear Mr. Harney:

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#321811.

The City of Corpus Christi (the "city") received a request for a police video recording of a statement made by a named individual. You claim that the submitted 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.

Initially, we note that some of the submitted information is not responsive to the instant request. The request seeks a video recorded statement of a specific person. However, you have submitted two video recorded statements of two separate individuals, one of which does not pertain to this request. The second statement is not responsive to the request. Accordingly, the city need not release non-responsive information and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismiss'd).

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. Under section 552.119, a governmental body must demonstrate that release of a requested photograph would endanger the life or physical safety of a peace officer. In this instance, you have not explained how release of the officers' images on the responsive video recording would endanger the officers' lives and physical safety. Accordingly, we determine that the city has failed to demonstrate the applicability of section 552.119 to the requested video recording. *See id.*; *see also id.* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies to requested information). Therefore, the requested video recording may not be withheld under section 552.119 of the Government Code. As you have raised no other exceptions to disclosure, the requested video recording 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/mcf

Ref: ID#321811

Enc. Submitted documents

c: Ms. Belinda Ayala
134 Blevins
Corpus Christi, Texas 78415
(w/o enclosures)