



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2008

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2008-16295

Dear Mr. Weir:

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# 328672.

The San Antonio Police Department (the "department") received a request for photographs of four named department officers. You claim that the submitted photographs are excepted from disclosure under section 552.119 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.119 of the Government Code provides as follows:

- (a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

¹Although you initially raised sections 552.101 through 552.140 of the Government Code, you have only submitted arguments under section 552.119 of the Government Code. Because you have not submitted arguments explaining how any other exceptions apply to the submitted information, we presume that you have withdrawn these other exceptions. *See* Gov't Code §§ 552.301, 552.302.

- (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.

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

Gov't Code § 552.119. You assert that all four officers' photographs should be withheld from disclosure under section 552.119 of the Government Code. Upon review, we find that the department has demonstrated that release of one of the four submitted officer photographs, which we have marked, would endanger an officer's life and physical safety. You do not indicate that any of the exceptions to the applicability of section 552.119 is present in this instance or that this officer has consented to the disclosure of his photograph. Accordingly, the department must withhold the photograph we have marked under section 552.119. However, we find that the department has failed to demonstrate that release of the remaining photographs would endanger the officers' lives or physical safety. Accordingly, the remaining photographs may not be withheld under section 552.119, and, as no other exceptions are raised, they must be released to the requestor.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 328672

Enc. Submitted documents

c: Requestor
(w/o enclosures)