



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2011

Mr. Peter Scott
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2011-13816

Dear Mr. Scott:

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# 430910 (City ID #'s 275 and 373).

The City of Wichita Falls (the "city") received two requests from different requestors for the official photograph of a named police officer.¹ You claim the submitted information is exempted from disclosure under section 552.119 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 143.090 of the Local Government Code. We note that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides as follows:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

¹We note the city sought and received clarification of one of the requests. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding; or
- (4) the officer gives written consent to the release of the photograph.

Act of May 25, 2011, 82nd Leg., R.S., H.B. 2006, § 1 (to be codified as Loc. Gov't Code § 143.090). The submitted information consists of a photograph of a city police officer. You inform us the named police officer has not given written consent to the release of the photograph. You do not inform us, and it does not appear, that any of the exceptions to withholding the photograph under section 143.090 are applicable. Therefore, we conclude the city must withhold the police officer's photograph under section 552.101 in conjunction with section 143.090 of the Local Government Code.³

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

³As we are able to make this determination, we need not address your remaining argument against disclosure.

Mr. Peter Scott - Page 3

Ref: ID# 430910

Enc. Submitted documents

c: Requestors
(w/o enclosures)