



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 5, 2012

Ms. Lee Ann Rimer  
Senior Assistant City Attorney  
City Attorney's Office  
City of Odessa  
P.O. Box 4398  
Odessa, Texas 79760-4398

OR2012-14010

Dear Ms. Rimer:

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# 463930.

The City of Odessa (the "city") received two requests for the official photographs of all employees of the city's police department, both sworn and non-sworn.<sup>1</sup> You state the city has released photographs of all non-sworn employees. You claim 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 some of the submitted information was the subject of a previous ruling issued by this office, Open Records Letter No. 2012-09052 (2012). In that ruling, this office concluded that, because the city failed to comply with the requirements of section 552.301

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<sup>1</sup>We note the city sought and received clarification from the requestors regarding the requests. See Gov't Code § 552.222(b) (stating 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); see also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

of the Government Code, the city must release the official photographs of three named city police officers.

You now argue the photographs which were at issue in the previous ruling are excepted from disclosure under section 552.119 of the Government Code. We note that because the photographs were ordered to be released in Open Records Letter No. 2012-09052, this office concluded that the information is not excepted from disclosure under the Act. Pursuant to section 552.301(f) of the Government Code, once this office has determined that information is not excepted from disclosure, a governmental body must release the information and may generally not seek another ruling pertaining to precisely the same information. *See Gov't Code § 552.301(f); Open Records Decision No. 665 at 2 (2000) (governmental body not authorized to seek attorney general decision unless it in good faith believes valid legal arguments exist to support claimed exception).* Accordingly, the city may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under the Act or by law. Because section 552.119 of the Government Code makes information confidential under the Act, we will address your arguments under that section for the previously released information as well as for the remaining 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, 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, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer.

You state the submitted photographs are those of city police officers. You do not inform us the officers concerned have consented to public disclosure of their photographs. You also

state the submitted photographs are not subject to subdivisions (1) through (3) of section 552.119(a). You explain that the officers to whom the photographs pertain may participate from time to time in undercover or other police operations in which public knowledge of the officers' appearance would endanger their lives or physical safety. We note section 552.119 is applicable only to a photograph of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. Therefore, based on your representations and our review of the information at issue, we conclude that to the extent the officers depicted in the submitted photographs are peace officers under article 2.12, the city must withhold their photographs under section 552.119 of the Government Code. To the extent the photographs do not depict a peace officer as defined by article 2.12, the city may not withhold those photographs under section 552.119 but must release them.

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/som

Ref: ID# 463930

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)