



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2019

Mr. Juan A. Roque
Assistant District Attorney
Bexar County Criminal District Attorney's Office
101 West Nueva Street 7th Floor
San Antonio, Texas 78205

OR2019-20648

Dear Mr. Roque:

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# 777508 (ORR# 7480).

The Bexar County Sheriff's Office (the "sheriff's office") received a request for the service photograph of a named sergeant. The sheriff's office claims the requested information is excepted from disclosure under sections 552.101, 552.119, and 552.139 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 143.090 of the Local Government Code, which reads as follows:

A department, commission, or municipality may not release a photograph that depicts a police officer unless:

¹The sheriff's office acknowledges, and we agree, it did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, because sections 552.101, 552.119, and 552.139 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the claims of the sheriff's office under those sections.

- (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.

Local Gov't Code § 143.090. We note the provisions of chapter 143 of the Local Government Code only apply to civil service cities. The sheriff's office is not a civil service city as defined under chapter 143 of the Local Government Code. Thus, section 143.090 is inapplicable to the submitted photograph and the sheriff's office may not it under section 552.101 of the Government Code on that basis.

Section 552.119 of the Government Code provides the following:

(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.

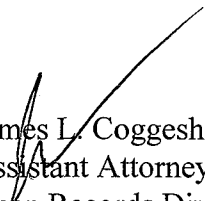
Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer. Upon review, we find the sheriff's office has not demonstrated, and it is not apparent from our review of the submitted information, that release of the photograph at issue would endanger the life or physical safety of the peace officers depicted. Therefore the sheriff's office may not withhold the submitted information under section 552.119 of the Government Code.

Section 552.139(b)(3) of the Government Code provides, “a photocopy or other copy of an identification badge issued to an official or employee of a governmental body” is confidential. *Id.* § 552.139(b)(3). Upon review, we find the sheriff’s office has failed to establish the applicability of section 552.139(b)(3) of the Government Code to the submitted information and, thus, may not withhold it on that ground. Consequently, the sheriff’s office must release the submitted information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 777508

Enc. Submitted documents

c: Requestor
(w/o enclosures)