



Legal Department

CITY OF CONROE

June 16, 2009

Office of the Attorney General
Open Records Division
P. O. Box 12548
Austin, Texas 78711-2548

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Request for Open Records Decision

Dear Attorney General Abbott:

This submission is made to satisfy the requirement of Texas Government Code §552.301. Enclosed please find the following:

1. A copy of the request for information;
2. The request and explanation for an Attorney General Opinion; and,
3. A copy of the police dash cam video responsive to the request (marked as "Exhibit A").

The request for information was received on June 2, 2009. The request states, in part, "This is a written request, pursuant to the state open records law, Tex. Gov't Code Ann..., for any patrol unit videos from the March 4, 2009 incident in which Montgomery County Judge, Alan Sadler, was detained for suspicion of DWI..." A copy of the entire request is attached hereto. The City of Conroe will treat this request as an open records request for the Conroe Police Department dash cam video pertaining to the incident, which contains the information requested.

The records enclosed herein, marked as "Exhibit A" should be exempted from public disclosure on the following bases:

Section 552.101 of the Texas Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable. The dash cam video responsive to the request depicts the images of a third party private citizen. This third party private citizen was riding in the patrol car of the arresting officer. The release of the dash cam video with the visual depiction of the third party citizen, who has not authorized the release of her image, would be highly intimate or embarrassing and the publication of the image would be highly objectionable to a reasonable person. The publication of the private citizen's image throughout the dash cam video, in relation to the arrest of a prominent public figure would be objectionable to a reasonable person. Once again, the private citizen has not authorized the release of her image. Such a release and publication of her image would be highly embarrassing and would be highly objectionable to a reasonable person.

The records enclosed herein, marked as "Exhibit A" should be exempted from public disclosure on the following bases:

Section 552.103 of the Texas Government Code states that information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment is or may be a party. The state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or *until the defendant has exhausted all appellate and post conviction remedies* in the state and federal court. The individual arrested and convicted has not exhausted his post conviction remedies. The police dash cam video responsive to the request involves an incident, which occurred on or about March 4, 2009. The individual arrested pled guilty to the misdemeanor charge of Driving While Intoxicated on April 3, 2009. The individual arrested, charged, and convicted maintains his right to a post conviction writ of habeous corpus. This individual maintains this right and may assert this post conviction right. The individual has not exhausted "all appellate and post conviction remedies", thus making the state a potential party to litigation of a criminal nature within the within the exception propounded by Section 552.103 of the Texas Government Code. Due to the recent conviction of the defendant, his status and political position in the community, and the nature of the charge against him, his potential to assert his post conviction rights are likely and the police dash cam video responsive to the request is at the foundation of the state's criminal litigation. The police dash cam video is directly related the state's criminal litigation of this case.

The records enclosed herein, marked as "Exhibit A" should be exempted from public disclosure on the following bases:

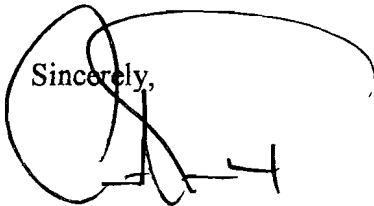
Section 552.119 of the Texas Government Code states that a photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, that release of which would endanger the life or physical safety of the officer, is excepted from the requirements of Section 552.021 unless: (1) 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. Further, 552.119 (b) indicates that a photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure. The officer is not under indictment or charged with an offense for his actions on March 4, 2009. The officer is not a party in a civil service hearing or arbitration and his image was not introduced as evidence in a judicial proceeding. The officer has not given his written consent to the disclosure of his image to the public. The responsive information attached hereto involves a highly political case. The officer depicted in the dash cam video is the officer that effectuated the arrest of a popular political figure her in Montgomery County. Such action, by some in the community, is seen in a bad light. Some in the community may seek retribution or to do harm based upon this officers actions as depicted in the police dash cam video. The officer's physical safety could be in jeopardy by his actions on March 4, 2009.

The records enclosed herein, marked as "Exhibit A" should be exempted from public disclosure on the following bases:

Section 552.101 of the Texas Government Code, excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable. The TCIC/NCIC "status" of the arrested individual is verbally indicated on the recording. This recording is the verbal status of the charged individual's criminal history as compiled or summarized, which enables the information to take on a character that implicates the subject's right of privacy. The information status reported in "Exhibit A" is not information, which was obtained from the federal National Crime Information Center (NCIC), or the Texas Crime Information Center (TCIC). The information status report in "Exhibit A" is information compiled and maintained by the City of Conroe Police and Records Division.

If you need additional information, please do not hesitate to contact me at (936) 522-3030. Thank you for your assistance with this matter.

Sincerely,



Gary A. Scott
Assistant City Attorney

A true and correct copy of this letter, without the enclosures, was mailed to Foster McNair, Montgomery County Monitor, 135 E. Mistybreeze Circle, The Woodlands, Texas 77381.



Gary A. Scott
