



Brett Ligon

District Attorney
9th Judicial District

207 W. Phillips, 2nd Floor
Conroe, Texas 77301

Conroe (936) 539-7800
Fax (936) 760-6940

July 14, 2009

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

Re: Request for attorney general's opinion concerning Foster McNair's request for access to scene video from *The State of Texas v. Alan Sadler*.

Greetings:

This office received on July 1, 2009, Foster McNair's request for access to "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 request is attached as appendix A. On behalf of district attorney Brett Ligon, I ask that the attorney general confirm that the police car video is not subject to mandatory disclosure under the Public Information Act for the reasons previously asserted by the City of Conroe.

County Judge Alan B. Sadler was arrested for driving while intoxicated on March 4, 2009, and he was charged by complaint and information with that offense in Cause No. 09-248350 in County Court at Law No. 3, Montgomery County, Texas. He entered a plea of guilty, and on April 3, 2009, the court found him guilty of DWI and assessed his punishment at confinement in jail for 3 days and payment of a \$1000 fine. A copy of the judgment is attached as appendix B. No appeal from that judgment has been taken, and as of this date, no application for habeas corpus relief from the judgment has been filed.

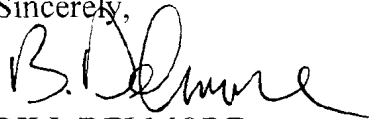
Mr. McNair initially requested a copy of the video in question from the City of Conroe. The Conroe city attorney has requested an attorney general's opinion as to whether the video is subject to mandatory disclosure under the Act. A copy of the opinion request and the attached correspondence from Mr. McNair is attached as appendix C.

Office of the Attorney General
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Page 2.

Because this office obtained a copy of the video, for the purpose of criminal prosecution, from the City of Conroe police department, the district attorney hereby joins in the city's request for an opinion, and seeks the attorney general's opinion as to whether the video may be withheld under the provisions of sections 552.101, 552.103 and 552.119 of the Texas Government Code, for the reasons set out in the city's opinion request. This office adopts by reference the supporting arguments made in the city's opinion request, and asks that the attorney general determine whether the video may be withheld from disclosure under the Act for the reasons stated by the city attorney for the City of Conroe.

A copy of the video in question is attached as appendix D. Please feel free to contact me if any additional information may be provided.

Sincerely,



BILL DELMORE
Assistant District Attorney
Montgomery County, Texas
936-539-7979

cc: Mr. Foster McNair
135 E. Mistybreeze Cir.
The Woodlands, TX 77381

Mr. Gary A. Scott
Assistant City Attorney
300 W. Davis
Conroe, TX 77305

APPENDIX A

July 01, 2009

Bill Delmore
Montgomery County District Attorney's Office
207 W. Phillips, 2nd Floor
Conroe, Texas 77301
Fax: 936-760-6940

Dear Mr. Delmore:

This is a written request, pursuant to the state open records law, Tex. Gov't Code Ann. 552.001 to 552.353, for a copy of any patrol unit videos from the March 4, 2009 incident in which Montgomery County Judge, Alan Sadler, was detained for suspicion of DWI.

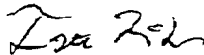
If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

As provided by the open records law, I will expect your response within ten (10) days. If you believe this information is not public, I ask that you immediately notify me and then seek a formal decision from the Texas Attorney General not later than ten (10) calendar days from your receipt of this request, as required by the open records law.

As a representative of the media I believe that disclosure of this information is in the public interest. By its very nature, the information requested (patrol unit video) is in the public interest and providing a copy of the requested information will primarily benefit the general public. As a service to the public, this information may be distributed/published and made readily available free of charge. I therefore request a waiver of all fees and charges pursuant to Section 552.267 of the act.

Thank you for your assistance.

Respectfully,



Foster McNair
Montgomery County Monitor
135 E. Mistybreeze Circle
The Woodlands, TX 77381
Ph. 832-524-1114
Fax: 281-292-0642
Email: admin@MontgomeryCountyMonitor.com

APPENDIX B

NO. 09-248350

THE STATE OF TEXAS

IN THE COUNTY COURT

vs.

Alan B Sadler

AT LAW NO. 3 OF

MONTGOMERY COUNTY, TEXAS

JUDGMENT

On this day the above entitled and numbered cause having been called for trial, came the State by her Assistant District Attorney, P. Grant G. Garcia, and the Defendant, who appeared in person and by counsel, WAIVED, (Knowingly, Intelligently, and Voluntarily) and the Defendant having been charged by Information with the misdemeanor offense of:

Driving While Intoxicated 'B'

both parties announced ready for trial; The Defendant, in person, in writing, and in open court waived the right to a trial by jury, and entered a plea of GUILTY / NOLO CONTENDERE to the charge contained in the information. Thereupon, the Defendant was admonished by the Court of the consequences of a plea; and it plainly appearing to the Court that the Defendant was mentally competent and the plea was free and voluntary, the said plea was accepted by the Court and is here entered of record on the minutes. The Court, having heard the evidence submitted and the argument of counsel thereupon, found the Defendant Guilty of the misdemeanor offense indicated above and assessed punishment at a fine of \$1,000.00 and 3 days confinement in jail.

Defendant hereby is to pay Court Costs of \$ 428.00 and a Fine of \$ 1,000.00 to the County Clerk of Montgomery County; and the total amount of Fine and Court Costs, if any, shall be due and payable on or before through collections, (if all monies not paid within 30 days, add \$25.00 to court costs).

Defendant hereby is to pay Court Appointed Attorney's fees to the County Clerk of Montgomery County in the amount of \$ WAIVED on or before _____.

Defendant's Texas Driver's License shall be suspended for a period of 90 days.

JAIL TIME: Defendant shall serve 3 hours/days/months in the Montgomery County Jail beginning at _____ p.m. on Credited and continuing until completion of said jail time OR begin said jail time and serve on consecutive WEEKENDS (if checked).

It is therefore CONSIDERED, ORDERED, and ADJUDGED by the Court that the Defendant is guilty of the offense as charged above, a misdemeanor, committed on or about 3/4, 2009, and that punishment is assessed by a fine of \$ 1,000.00 and 3 hours/days/months confinement in the Montgomery County Jail, and that the State of Texas do have and recover of the Defendant said fine and all costs of the prosecution, for which execution will issue.

SIGNED and ENTERED this 3 day of April, 2009.

[Signature]
JUDGE PRESIDING

2009 APR - 3 PM 12:13
FOR RECORD

SENTENCE

And thereupon the said Defendant was asked by the Court whether there was any reason why sentence should not be pronounced against him/her, and he/she answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of the Defendant and pronounced sentence as follows, to wit: "It is the order of the Court that the Defendant named above, who has been adjudged to be guilty of the above stated offense, a misdemeanor, whose punishment has been assessed at a fine and confinement in jail, as stated above, forthwith be committed to the custody of the Sheriff of the Montgomery County Jail for the above indicated period and until the fine and costs are fully paid and satisfied according to law."

The Defendant is given credit for 3 days already served in the Montgomery County Jail.

SIGNED and ENTERED this the 3 day of April, 2009.

APPENDIX C



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 habeas 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:

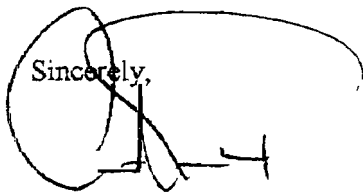
Section 552.119 of the Texas Government Code states that a photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, that release of which would endanger the life or physical safety of the officer, is excepted from the requirements of Section 552.021 unless: (1) 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.

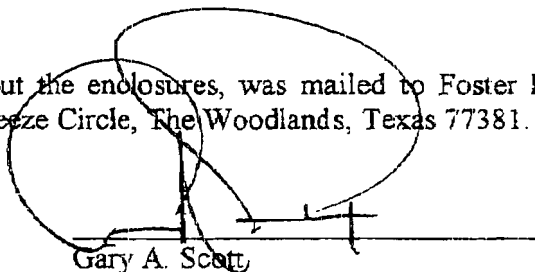
If you need additional information, please do not hesitate to contact me at (936) 522-3030. Thank you for your assistance with this matter.

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. Mistybreze Circle, The Woodlands, Texas 77381.



Gary A. Scott

FROM : OPE RECORDS

FAX NO. : 936 522 3374

Jun. 22 2009 27:49PM F2

091030588

June 01, 2009

Sgt. Bob Berry
Conroe Police Department
700 Old Montgomery Rd
Conroe, TX 77301

Dear Sgt. Berry:

This is a written request, pursuant to the state open records law, Tex. Gov't Code Ann. 552.001 to 552.353, for a copy of any patrol unit videos from the March 4, 2009 incident in which Montgomery County Judge, Alan Sadler, was detained for suspicion of DWI.

Please also include any policies regarding patrol unit, video storage and retention.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

As provided by the open records law, I will expect your response within ten (10) days. If you believe this information is not public, I ask that you immediately notify me and then seek a formal decision from the Texas Attorney General not later than ten (10) calendar days from your receipt of this request, as required by the open records law.

As a representative of the media I believe that disclosure of this information is in the public interest. By its very nature, the information requested (patrol unit video) is in the public interest and providing a copy of the requested information will primarily benefit the general public. As a service to the public, this information may be distributed/published and made readily available free of charge. I therefore request a waiver of all fees and charges pursuant to Section 552.267 of the act.

Thank you for your assistance.

Respectfully,

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