

June 27, 2009

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

Certified Mail # 7006 0810 0001 5489 3840

RE: Response to City of Conroe, TX attorney, Gary Scott's request for ruling regarding release of Conroe PD dash cam video – File #352962

Dear Attorney General Abbott:

On June 1, 2009, I mailed an open records request (see "Enclosure A") to the public information officer of the Conroe Police Department asking 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.*" Also included was a request for, "*any policies regarding patrol unit, video storage and retention.*"

Responding to the request, Mr. Gary Scott, Assistant City Attorney of Conroe, Texas, sent a letter dated June 16, 2009 to the Office of the Texas Attorney General claiming the requested information is exempt from public disclosure under the Act (see "Enclosure B").

I also received a copy of Mr. Scott's June 16, 2009 request for a ruling. Please note, Mr. Scott's June 16, 2009 correspondence did not include nor did it mention any documents responsive to the second part of the original request (a request for "*any policies regarding patrol unit, video storage and retention.*") Also, I have not received any separate correspondence or documents responsive to this portion of the request.

One of the subjects of the request is a Conroe Police Department dash camera video of an extremely minor accident scene in which Montgomery County Judge, Alan Sadler, struck another stationary vehicle from behind. The stationary vehicle was in a left-hand turn lane of a major four-lane public roadway when the collision occurred.

As you are most assuredly aware, the following rebuttals to the claims made by Mr. Scott are made without the benefit of a visual inspection of the requested dash cam video. Therefore, I am in a highly disadvantageous position in regards to refuting claims made by Mr. Scott. I am relying, not only on my efforts to obtain other information related to the requested material, but also trusting the Texas Attorney General to dedicate ample resources and attention to the review of the information presented within.

Mr. Scott claims the requested dash camera video should be excepted from disclosure under Section 552.101 of the Act. Specifically, he claims the requested video depicts, "*...images of a third party private citizen.*" Additionally, he claims the depiction of images of the third party

citizen, *“would be highly intimate or embarrassing and the publication of the image would be highly objectionable to a reasonable person.”*

After talking to the driver of the vehicle that was struck by Judge Sadler, I believe the third party moniker Mr. Scott uses to describe the female in the video is inaccurate. Third party typically denotes a non-involved party. I believe the female referred to by Mr. Scott as a “third party private citizen” is the driver of the vehicle Judge Sadler struck and as such was an involved party not a disinterested third party as Mr. Scott infers.

The common law right of privacy encompassed by section 552.101 protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public.

Open Records ruling OR2003-8692 states, *“The types of information considered intimate and embarrassing by the Texas Supreme Court in Industrial Foundation included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. Id. at 683.”*

Based on the Texas Supreme Court’s ruling in the above case I do not believe the depiction of images of a third party private citizen in the requested material meets the common law privacy standard for a legitimate exception from disclosure under section 552.101 of the Act as Mr. Scott claims.

Mr. Scott also claims exceptions from disclosure for Judge Sadler under the same section of the Act (552.101).

Once again, in regards to section 552.101 and the doctrine of common law privacy, the Texas Attorney General’s web-site states, *“Section 552.101 applies to information when its disclosure would constitute the common law tort of invasion of privacy through the disclosure of private facts. To be within this common law tort, the information must (1) contain highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and (2) be of no legitimate concern to the public.”*

Judge Sadler is an elected public official therefore his criminal history, if any, would definitely be of legitimate concern to the public. Therefore, this situation does not meet the common law privacy standard necessary to claim a legitimate exception to section 552.101 of the Act.

Additionally, it is understood that information contained in the federal National Information Center (NCIC) database, or the Texas Crime Information Center (TCIC) database, must be withheld from disclosure. However, Mr. Scott states, *“The information status reported in ‘Exhibit A’ is not information, which was obtained from the federal National 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.”*

An audio recording<sup>1</sup> (see “Enclosure C”) and transcript<sup>2</sup> (see “Enclosure D”) of the Conroe Police Department’s radio dispatch makes no mention of a request for TCIC/NCIC criminal history information. Furthermore, the release of the video containing audio of Judge Sadler’s “information status” could not be highly intimate or embarrassing, as Mr. Scott claims. On the contrary, a reasonable person could claim the disclosure of this information would be highly advantageous to Judge Sadler due to the fact that at the time of this incident, Judge Sadler did not have any criminal case history (CCH) as indicated by Conroe Police Department’s radio dispatcher when she referred to Judge Sadler’s CCH status, over public airwaves, as, “No CCH.”

Mr. Scott also claims section 552.119 as an exception to release of the requested information. Mr. Scott claims the release of the officer’s image, “*That effectuated the arrest of a popular political figure her[e] in Montgomery County,*” could jeopardize the officer’s physical safety. I believe the officer who effectuated the arrest was a patrol officer in a marked patrol vehicle, wearing a Conroe Police Department uniform. The incident occurred on public property, therefore any news media or individual could take the officer’s picture during the incident without the permission of the officer. Protecting the identity of an undercover officer is understandable. Protecting the identity of a patrol unit officer whose job requires exposure to the public on a continuous basis is not.

Also, the court file (see “Enclosure E”) for this case contains an Affidavit For Order Of Arrest (see “Enclosure F”). This file and Affidavit For Order Of Arrest, which is readily available to the public, identifies the arresting officer by name. Therefore, information as to the identity of the arresting officer is already a matter of public record. If anyone intended to cause physical harm to the arresting officer, information available in other public documents could be used, along with the information above to determine the home address of the officer. Therefore, the cat is already out of the bag so to speak, making the argument not to release the arresting officer’s image a moot point.

In addition, Mr. Scott argues, “*Such action [the arrest], 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.*” This argument, if validated as a legitimate exception to the Act, could effectively shield all public officials from the public scrutiny inherent in the release of dash cam video.

Finally, Mr. Scott claims the requested information should be excepted from disclosure under section 552.103 of the Act. In general, Mr. Scott is claiming the defendant has not “*exhausted all appellate and post conviction remedies...*” and that the defendant retains his post conviction right to file a writ of habeas corpus, thus making the state a potential party to litigation.

In this case, according to court records, the defendant, Judge Sadler, filed a Misdemeanor Plea of Guilty/Nolo Contendere (see “Enclosure G”). Additionally, Judge Sadler signed a Trial Court’s

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<sup>1</sup> Information recorded from a publically available radio receiver. Extraneous audio not related to the incident at hand was edited for clarity.

<sup>2</sup> Transcription produced from aforementioned recording of communications between Conroe Police Department dispatchers and patrol units.

Certification of Defendant's Right of Appeal (see "Enclosure H") which clearly states the defendant's case, "*is a plea-bargain case, and the defendant has NO right of appeal.*"

The defendant was sentenced to time served and released. Therefore, at the time of the request, the defendant was neither confined nor restrained, thus the conditions needed to file a writ of habeas corpus were not met. Also, the 30-day post conviction appeal period has expired.

Even if Judge Sadler had not exhausted his post conviction remedies, he, being a political beast, would be highly reluctant to exercise any of those remedies due to the negative publicity they would create.

In conclusion, I believe Judge Sadler has exhausted all his post conviction remedies. Therefore, it is not plausible to think, "*litigation is pending or reasonably anticipated,*" as required to claim an exception under section 552.103 of the Act.

Thank you for your time and consideration.

Respectfully,

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- Enclosure A: Copy of original letter from Mr. McNair requesting information dated June 1, 2009.
- Enclosure B: Copy of Mr. Scott's letter to Attorney General dated June 16, 2009
- Enclosure C: Copy of audio recording of the event
- Enclosure D: Copy of audio recording transcript of the event
- Enclosure E: Copy of court documents from county clerk
- Enclosure F: Copy of Affidavit For Order Of Arrest
- Enclosure G: Misdemeanor Plea of Guilty/Nolo Contendere
- Enclosure H: Trial Court's Certification of Defendant's Right of Appeal