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Mr. Gary E. Pope
Assistant City Attorney
City of San Antonio
P. O. Box 9066
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Open Records Decision No. 423

Re: Whether a photograph of a police officer who has been arrested for sexual assault is excepted from disclosure under the Open Records Act

Dear Mr. Pope:

You inform us that the San Antonio Police Department maintains photographs of its peace officers which

are used to identify a particular police officer when the need arises, e.g. [for inclusion in a photo line-up resulting from complaints against a sworn member of the department.

You have been asked to release the photograph of a police officer who has been arrested for sexual assault and, on behalf of the city of San Antonio, you request our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether the photograph is excepted from required public disclosure. You assert that the photograph is excepted from disclosure by both sections 3(a)(2) and 3(a)(8) of the act.

Section 3(a)(8) excepts

records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement.

We understand that the photograph is maintained as part of the personnel records of the department and was not taken when the officer was arrested, fingerprinted, and booked; i.e. it is not a so-called "mugshot." Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975, writ ref'd n.r.e.), per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision

Nos. 408 (1984); 339 (1982); 127 (1976). If this photograph has been maintained only as part of the officer's personnel records, section 3(a)(8) has no application in the absence of special circumstances not shown here.

You also claim that the photograph is excepted from disclosure by section 3(a)(2) which excepts:

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act

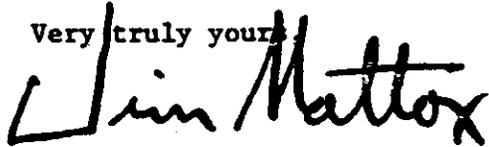
Generally, the scope of employee privacy under section 3(a)(2) is narrow. Open Records Decision Nos. 336, 315 (1982); 278 (1981); 260, 257 (1980). It is triggered when the release of the information sought would lead to a "clearly unwarranted" invasion of one's personal privacy, Open Records Decision Nos. 315 (1982); 298, 269, 260 (1981); 245 (1980), revealing "intimate details of a highly personal nature." Open Records Decision Nos. 315 (1982); 298, 285, 269 (1981); 260 (1980); 224 (1979); 169, 168 (1977). Employee privacy under section 3(a)(2) is less broad than common law privacy under section 3(a)(1), because of the greater public interest in disclosure of information regarding public employees. Open Records Decision Nos. 269 (1981); 169 (1977).

In Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.), the court of appeals noted that claims arising under section 3(a)(2) should be resolved by applying the privacy test set forth in Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976). Under that test, information may not be withheld if it is of sufficient legitimate interest to the public, even if a person of ordinary sensibilities would object to its release on the grounds that it is highly intimate or embarrassing. Id. at 685. Without doubt, the release of a photograph of a person arrested for sexual assault is highly embarrassing to that person, and a person of ordinary sensibilities would undoubtedly object to its release, but we cannot conclude, on the basis of the facts before us, that it is of no legitimate interest to the public sufficient to except it from disclosure. See, e.g., Open Records Decision No. 418 (1984).

This office has already held that the name of a complainant filing a complaint against a police officer, the name of the officer, and the disposition of the matter are not excepted by section 3(a)(2).

Open Records Decision Nos. 350, 329 (1982); 208 (1978). See also Open Records Decision Nos. 316, 315 (1982). We conclude that the release of the photograph in the department's personnel file is not excepted from required public disclosure by section 3(a)(2) of the Open Records Act.

Very truly yours,



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