



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

December 28, 1989

Honorable Lloyd Garza
City Attorney
City of San Antonio
P.O. Box 9066
San Antonio, Texas 78285

Open Records Decision No. 536

Re: Whether section 3(a)(19)
of the Texas Open Records Act,
article 6252-17a, V.T.C.S.,
which protects photographs of
peace officers, applies after
an officer has died (RQ-1627)

Dear Mr. Garza:

The City of San Antonio received a request under the Open Records Act, article 6252-17a, V.T.C.S., for release of a photograph of a San Antonio police officer who died in a fatal automobile accident while on duty. You inquire whether section 3(a)(19) of the Open Records Act protects from required public disclosure a photograph of a police officer after the death of the officer who is the subject of the photograph.

Section 3(a)(19) excepts from required public disclosure

photographs that depict a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer unless:

(A) the officer is under indictment or charged with an offense by information; or

(B) the officer is a party in a fire or police civil service hearing or a case in arbitration; or

(C) the photograph is introduced as evidence in a judicial proceeding.

In Open Records Decision No. 502 (1988), this office interpreted section 3(a)(19) to protect photographs of all police officers unless one of the circumstances enumerated in subsections (A), (B), or (C) of section 3(a)(19) obtained, or the police officer consented to release of the photograph pursuant to section 3(c) of the act, which provides that "[a] photograph exempt from disclosure under subsection 3(a)(19) of this section may . . . be made public, but only if the peace officer . . . gives written consent to the disclosure." The interpretation of section 3(a)(19) in Open Records Decision No. 502 stemmed from an analysis of the relation among sections 3(a)(19), 3(a)(8), and 3(c) of the Open Records Act, the Bill Analysis of H.B. 474, which was the bill that proposed the exception, and the House and Senate Floor debates about that bill. See Open Records Decision No. 502. Open Records Decision No. 502 determined that section 3(a)(19) provided blanket protection for the photographs of police officers because release of such photographs would endanger the lives of the officers. A determination that release of a specific photograph would endanger the life of the depicted officer was not a condition precedent to releasing the photograph, as the language concerning endangerment of the officer's life was held to be descriptive and not qualifying or limiting.

The purpose of section 3(a)(19) is thus two-fold: to protect peace officers from life-threatening harassment since release of their photographs might target them for criminal reprisal whether or not they are involved in undercover work, and to insure that such protection is effective by removing from the custodian of the photograph the discretion to release it by conferring that discretionary power solely on the police officer who is the subject of the photograph. The rationale underlying the protection of section 3(a)(19) is inapplicable after the peace officer's death. Therefore section 3(a)(19) does not except from required public disclosure a photograph of a police officer after the officer's death.

Our conclusion is consistent with previous decisions of this office addressing the issue of whether certain exceptions of the Open Records Act survive the death of a person whose privacy is protected by the exception. See Attorney General Opinion H-917 (1976) (common law privacy under sections 3(a)(1) and 3(a)(2) lapses on individual's death); Open Records Decision No. 524 (1989) (the protection from disclosure provided student records by section 3(a)(14) of the act lapses at death of student). Compare Attorney General Opinion JM-851 (1988) (the specific confidentiality provisions of the Human Resources Code apply to medicaid

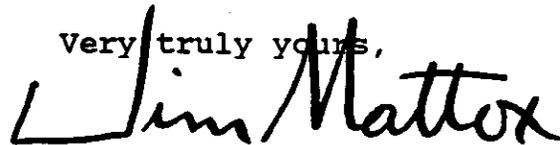
records even after the death of the covered person where statute indicates no legislative intent that the confidentiality provisions lapse at death) with Attorney General Opinion JM-229 (1984) (privacy interests protected by sections 3(a)(1) and 3(a)(2) lapse at subject's death, but statutory confidentiality for medical information does not lapse where statute expressly deals with release of confidential information after subject's death).

The city also raised section 3(a)(3) as an exception to disclosure. Section 3(a)(3) protects from required public disclosure information related to litigation, either pending or anticipated. However, since the date this request was made, communication from your office informs us that a settlement has been reached and that litigation is no longer anticipated on the issue. This decision therefore does not address your section 3(a)(3) claim.

S U M M A R Y

Section 3(a)(19) of the Open Records Act, which protects photographs of police officers, ceases to apply after the death of the officer depicted.

Very truly yours,



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