



THE ATTORNEY GENERAL
OF TEXAS

JIM HANCOCK
ATTORNEY GENERAL

February 20, 1990

Mr. John C. West, Jr.
Chief, Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR90-078

Dear Mr. West:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 6431.

The Department of Public Safety received several open records requests for information. You do not raise any exception to disclosure of most of the information sought in the requests, but you ask several questions relating to the scope and applicability of section 3(a)(19) of the Open Records Act to photographic and video depictions of peace officers. As to the information for which you raise no exception to disclosure, we assume that the information has been released. If an exception is not raised, it is waived. See Attorney General Opinion JM-672 (1987).

You first ask about photographs of officers that were obtained by the department during an investigation of a discharged officer. The photographs were not introduced into evidence in any judicial proceeding, the officers depicted were not under indictment nor charged with an offense by information, and the officers were not parties to any fire or police civil service hearings or a case in arbitration. You inform us that, because it is closed, this investigation file is "generally available to the public," but inquire whether these photographs must be withheld.

Section 3(a)(19)(C) protects from required disclosure photographs depicting peace officers, except in the three circumstances set out in subsections (A) through (C). Section 3(c) provides that a peace officer's photograph may be released upon written consent of the officer depicted. Discretion to release a peace officer's photograph is completely removed from the custodian of the photographs by

these provisions. As to your first inquiry, none of the pre-conditions for release of the photographs are present. Therefore, the photographs may not be released, despite the fact that other information in the investigative file may be open.

Secondly, you ask whether a videotape of a line-up of police officers that was not introduced into evidence may be withheld. A video image is the functional equivalent of a photograph. Videotapes of peace officers are protected by section 3(a)(19) unless one of the circumstances set out in subsections (A) through (C) exists. You indicate that none of the conditions set out in subsections (A) through (C) pertain to this information. Therefore, the videotape depicting police officers in a line-up must be withheld.

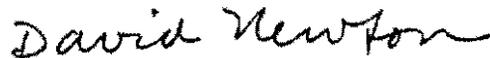
You also ask about a videotape of a DWI arrest which includes images of the arresting police officer. The tape was not introduced into evidence in a judicial proceeding. We addressed a similar inquiry from your office in OR90-57 and OR89-432 and concluded that videotapes including depictions of police officers must be withheld under section 3(a)(19). Deletion of parts of the tape containing images of the officer may be made if feasible, but if the images of the officer are inextricably intertwined with other non-excepted images, or there are practical difficulties in editing the tape, it may be withheld in its entirety. See Open Records Decision No. 364 (1983). Costs for the deletion of information deemed confidential by the Open Records Act must be borne by the requestor of the information. See Open Records Decision No. 488 (1988).

Your final question concerns subsection (B) of section 3(a)(19). You ask whether the fact that a DPS officer is a party to the "discipline process" of the Department of Public Safety, which is not governed by civil service law or arbitration, triggers the limitation to non-disclosure embodied in section 3(a)(19)(B). Section 3(a)(19)(B) permits disclosure of a photograph of a police officer "if the officer is a party in a fire or police civil service hearing or a case in arbitration." Firefighters and police officers civil service is governed by Local Government Code sections 143.001 et seq. These provisions apply to certain municipal employees. The Department of Public Safety is a state agency. Gov't Code § 411.002. A discharged DPS officer is entitled to a public hearing before the Public Safety Commission, which controls the department. Gov't Code §§ 411.007(f); 411.003. A disciplinary or due process hearing under section 411.007(f) does not qualify as a "police civil service hearing or arbitration" circumstance

permitting disclosure of a DPS officer's photograph under section 3(a)(19)(B).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-078.

Yours very truly,



David A. Newton
Assistant Attorney General
Opinion Committee

DAN/le

Ref.: ID# 6431, 5922

cc: Rob D'Amico
Reporter
Beeville Bee-Picayune
P.O. Box 10
Beeville, Texas 78104

Mark S. Helmke
Foster, Lewis, Langley, Gardner & Banack
Sixteenth Floor
Frost Bank Tower
San Antonio, Texas 78205

Roy Rutanen
KMOL-TV
P.O. Box 2641
San Antonio, Texas 78299-2641