



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2003

Mr. Jeff Lopez
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2003-5974

Dear Mr. Lopez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189318.

The Department of Public Safety (the "department") received a request for "photographic materials, both video and still images, relating to the theft of a redistricting map and related materials belonging to Mr. Scott Simms that occurred in the Texas House of Representatives on or about April 10, 2003" and all investigative findings. The department states it will release the investigative report and explains that it has forwarded the still images from a videotape to the Travis County Attorney's Office. The department asserts the videotape is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Seventy-eighth Legislature recently added section 418.182 to chapter 418 of the Government Code. This newly enacted provision makes certain information related to terrorism confidential. House Bill 9 which became effective on June 22, 2003, provides in relevant part:

**Sec. 418.182. CONFIDENTIALITY OF CERTAIN INFORMATION
RELATING TO SECURITY SYSTEMS.**

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the

specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Act of June 2, 2003, 78th Leg., R.S., H.B. 9, § 3 (to be codified at Gov't Code § 418.182). The department explains the videotape was made from security cameras that are part of the overall security system for the Capitol complex and intended to protect the lives and property within the complex from acts of terrorism and other related and unrelated criminal activity. Furthermore, the department contends because the videotape would show the locations of the cameras, the videotape is confidential under section 418.182. Having reviewed the department's arguments, we conclude the department has not adequately shown how the videotape made from a Capitol security camera reveals the location of a security system used to protect public property from an act of terrorism or criminal activity related to terrorism. Moreover, contrary to the department's assertion, section 418.182 does not apply to criminal activity not related to terrorism. Thus, the department may not withhold the videotape under section 418.182.

Section 552.108(b) excepts from disclosure "an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states that the requested videotape identifies camera locations and scopes of view, the release of which would reveal security vulnerabilities. The department further states that release of the videotape would "negate the system's security and investigative value, since any individual or group seeking to commit a crime on the Capitol grounds would have the knowledge necessary to take steps to either avoid detection by, or disable the system." After reviewing the submitted information and considering the department's arguments, we conclude that the department has failed to demonstrate how release of the requested information would interfere with law enforcement. Accordingly, the videotape is not excepted from public disclosure under section 552.108(b)(1) of the Government Code. The department must release the videotape.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 189318

Enc: Submitted videotape

c: Ms. Susan Weddington
Chairman
Republican Party of Texas
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(w/o enclosure)