

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

www.dps.texas.gov



STEVEN C. McCRAW
DIRECTOR
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DEPUTY DIRECTORS



COMMISSION
A. CYNTHIA LEON, CHAIR
MANNY FLORES
FAITH JOHNSON
STEVEN P. MACH
RANDY WATSON

April 15, 2015

Via Email

Ty Clevenger
tyclevenger@yahoo.com

RE: Public Information Request for records regarding facial recognition software, social media searches, personnel records (PIR # 15-1550)

Mr. Clevenger:

The Department received your above-referenced request on April 1, 2015. The Department has located records responsive to your request; however, we believe some of the records may be exempted from required public disclosure at this time. We are seeking a ruling from the attorney general's office with respect to disclosure of these records, and a copy of our request letter is enclosed. You will be notified directly by the attorney general's office when a ruling is issued.

I believe that some of the information you have requested can be made available to you. Due to the nature of the information and how it is maintained by the Department, it will not be ready within the ten (10) day period defined by section 552.221 of the Government Code, but will be made available to you once the information has been gathered. We are currently working on your request, and I expect to contact you about releasing the information by the end of the business day on May 1, 2015.

If you have any questions regarding this request, please submit them in writing via facsimile to (512) 424-5716, via email to OGC.Webmaster@dps.texas.gov, via mail to the address in the letterhead, or in person at our offices at 5805 N. Lamar Blvd. in Austin. Thank you.

Cordially,

A handwritten signature in blue ink that reads "Molly Cost".

Molly Cost
Assistant General Counsel

cc: Office of the Attorney General
Open Records Division
209 West 14th Street, 6th Floor
Austin, Texas 78701

\\hqogcs001\ORA\2015 requests\15-1550\15-1550 (15-04-15) letter to requestor

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April 15, 2015

Via Hand Delivery

Office of the Attorney General
Open Records Division
209 West 14th Street, 6th Floor
Austin, Texas 78701

RE: Public Information Request for records regarding facial recognition software, social media searches, personnel records (PIR #s 15-1549 and 15-1550)

DATE REQUEST FOR INFORMATION RECEIVED:
DATE REQUEST FOR RULING SUBMITTED TO ATTORNEY GENERAL:

4/1/2015
4/15/2015

Dear Open Records Division:

The Department of Public Safety received the above-referenced requests for information from Cody Lillich and Ty Clevenger on April 1, 2015. We believe some of the requested information is exempted from required public disclosure pursuant to sections 552.101 through 552.154 of the Government Code. Accordingly, we are requesting a ruling regarding the release of these records.

Please find enclosed the requests and the notices of our request for a ruling sent to the requestors. The responsive records or a representative sample of the records we wish to except from required disclosure, as well as arguments explaining why the stated exceptions apply, will be submitted to your office no later than April 23, 2015. Please feel free to contact me at (512) 424-2890 if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads 'Molly Cost'.

Molly Cost
Assistant General Counsel

Enclosure(s)

cc: Cody Lillich
KLTV
105 West Ferguson
Tyler, TX 75703

Ty Clevenger
Attorney at Law
1095 Meadow Hill Drive
Lavon, TX 75166

\\hqogcs001\ORA\2015 requests\15-1549\15-1549 (15-04-15) letter to AG

From: Ty Clevenger [tyclevenger@yahoo.com]
Sent: Wednesday, April 01, 2015 10:37 AM
To: OGC Webmaster; Media And Communications Office
Subject: letter to Director McCraw / public information request
Attachments: 2015.04.01 Letter to DPS director.pdf; 2015.04.01 Letter to Travis DA.pdf

I have attached a letter to Director McCraw that also contains a public information request. Please forward both of the attached letters to Col. McCraw. Thanks.

Ty Clevenger

TY CLEVINGER

Attorney at Law
1095 Meadow Hill Drive
Lavon, Texas 75166

telephone: 979.985.5289
facsimile: 979.530.9523

tyclevenger@yahoo.com
Texas Bar No. 24034380

April 1, 2015

Col. Steven McGraw, Director
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-4087

Re: Trooper Billy L. Spears

Col. McGraw:

As you know, you recently overturned disciplinary charges against Trooper Billy L. Spears, reversing the decision of everyone from his lieutenant to the chief of the highway patrol. I write to request your assistance in preventing further retaliation against Trooper Spears.

On March 24, 2015, Trooper Spears was officially counseled by his sergeant and lieutenant for "deficiencies" because he was photographed standing next to Calvin Broadus, a.k.a. Snoop Dogg, at the South by Southwest conference in Austin. The counseling record reads as follows: "While working a secondary employment job, Trooper Spears took a photo with a public figure who has a well-known criminal background including numerous drug charges. The public figure posted the photo on social media and it reflects poorly on the Agency."

In reality, Trooper Spears did not take the photograph, nor did he request it. He was working security backstage (with the advance approval of DPS) when Snoop Dogg requested the picture. Snoop Dogg's publicist took the photograph and it was posted on Instagram with the caption "Me n my deputy dogg." Moreover, Trooper Spears was not aware of Snoop Dogg's criminal history, nor was he aware that DPS personnel are expected to run criminal background checks of everyone who requests a picture.

The surrounding circumstances of this disciplinary action make it all the more obvious that it was an act of retaliation. At approximately 9 p.m., Trooper Spears was informed by Sgt. Michael Sparks that Lt. Jimmy Jackson would be driving from Tyler to Gilmer to serve him with a copy of the counseling form. Sgt. Sparks also told Trooper Spears that DPS is now requiring the presence of two superior officers for any incident involving him. I doubt there are any other troopers who must be served by at least two superior officers, and I must wonder why Trooper Spears was singled out for special treatment. I must also ask what is so special about Trooper Spears that a lieutenant would drive 80 miles round trip to serve him at 9:24 p.m. in the evening.

According to Trooper Spears, shortly before he was served with the counseling form, Sgt. Sparks said he was looking at Trooper Spears from behind to see if he had a target on his back. Sgt. Sparks recounted a discussion with Lt. Jackson wherein they both said they probably would have consented to having their pictures made with Snoop Dogg, and he further added that both he and Lt. Jackson disagreed with the decision to discipline Trooper Spears. In other words, even your own personnel recognize that someone is retaliating against Trooper Spears.

According to Sgt. Sparks, the disciplinary action was initiated by Asst. Director David Baker after Trooper Spears's photograph was detected during routine scanning of social media. Since nothing in the Instagram post identifies Trooper Spears or his agency, I must wonder whether DPS is using its facial recognition software to troll for pictures of DPS employees (or perhaps just targeted DPS employees). Regardless, Trooper Spears may bring civil claims against DPS personnel pursuant to the Texas Whistleblower Act, Tex. Gov't Code 554.001 et seq., and he may also bring federal civil rights claims for retaliation pursuant to 42 U.S.C. § 1983. Moreover, DPS personnel may be criminally prosecuted for violating Texas Penal Code §§ 39.02 (abuse of official capacity) and 39.03 (official oppression) as well as federal civil rights statutes. *See* 18 U.S.C. §§ 241 and 241.

I must insist that you vacate the February 4, 2015 and March 24, 2015 HR-31 forms and remove them from Trooper Spears's file. I also request that you inform me of the steps that you intend to take, if any, to prevent further retaliation against Trooper Spears. The limitations deadline for a Whistleblower Act lawsuit expires in three weeks, so I request that you respond not later than April 7, 2015. Otherwise, we may proceed with litigation, in which case we will ask the court to enjoin DPS from further acts of retaliation.

Finally, I request the opportunity to view the following documents, records, communications or other data (regardless of format, *e.g.*, paper or electronic) pursuant to the Texas Public Information Act:

1. All policies and/or guidelines governing the use of facial recognition software by DPS personnel. This request includes, but is not limited to, e-mail communications setting forth or discussing any such policies or guidelines.
2. Records, documents, or communications reflecting the name and/or purchase price of facial recognition software used by DPS personnel.
3. Records, documents, or communications reflecting agreements with other agencies (*e.g.*, FBI or local police) for the use of facial recognition software. This request includes, but is not limited to, records or documents showing whether other agencies are allowed to use photographs maintained by DPS (*e.g.*, drivers license photos) for purposes of facial recognition searches.
4. Records, documents, or communications concerning all photographs of DPS personnel that were flagged by facial recognition software since January 1, 2014.

5. Records, documents, or communications indicating whether DPS searches social media for photographs of all employees, targeted employees, or any other identifiable groups (e.g., fugitives or missing children).
6. Records, documents, or communications concerning all other incidents of counseling or disciplinary action against DPS personnel since January 1, 2014 that resulted from photographs posted on social media.
7. Records, documents, or communications concerning the March 24, 2015 counseling of Trooper Spears. This request includes, but is not limited to, records or documents indicating how Trooper Spears's photograph came to the attention of DPS supervisors.
8. Records, documents, or communications concerning whether more than one supervisory officer must be present for any counseling or disciplinary activities involving Trooper Spears.
9. Records, documents, or communications generated in response to my March 30, 2015 email from "tyclevenger@yahoo.com" to "media@dps.texas.gov." This request includes, but is not limited to, draft responses or talking points memoranda.

I can be reached on my cell phone at 202-577-8606 if you wish to discuss these matters further. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

cc: Texas Public Safety Commissioners
Mr. Gregg Cox, Director of Special Prosecutions
Travis County District Attorney's Office
Ms. Ashley Hoff, Chief, Austin Division
Office of the U.S. Attorney for the Western District of Texas