



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2008

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2008-08601

Dear Ms. Lytle:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 313789.

The El Paso District Clerk's Office (the "district clerk") received a request for a specified expunction order. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). The Act does not apply to records of the judiciary. See Gov't Code § 552.003(1)(B) (definition of "governmental body" under Act specifically excludes the judiciary). Information that is "collected, assembled or maintained by or for the

¹The requestor asks this office to open a criminal investigation. Conducting such an investigation is beyond the scope of this division's authority in issuing open records decisions. See Gov't Code § 552.301(a) (division's authority is limited to determining whether requested information falls within an exception to disclosure). Thus, this ruling does not address the issues raised by the requestor. However, this division has forwarded copies of the requestor's correspondence to the Criminal Investigations Division.

judiciary” is not subject to the Act. Gov’t Code § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) (“function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act.”). In this instance, the requestor submitted a written request to the district clerk for a record the district clerk maintains for the 346th Judicial District Court of El Paso County. Thus, we find the submitted expunction order is a record of the judiciary. Accordingly, the district clerk need not release the submitted document in response to the present request.²

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

²Because we find the Act is not applicable to the information at issue, we do not reach your argument against disclosure of this information.

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 Office of the Attorney General 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. 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 313789

Enc. Submitted documents

c: Mr. Michael R. "Mickey" Milligan
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(w/o enclosures)