ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2008

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

OR2008-15093

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# 326975.

The El Paso County Attorney's Office (the "county attorney") received a request for all information pertaining to a named individual that the requestor has previously requested. You state that the county attorney has previously released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.114, 552.115, 552.1175, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by an interested third party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You inform us that the requested information was the subject of previous requests for information addressed by the requestor to the county attorney, the El Paso County Sheriff's Office, the El Paso County District Attorney's Office (the "district attorney"), and the El Paso County District Clerk's Office (the "district clerk"), in response to which this office issued Open Records Letter No. 2008-07536 (2008). In Open Records Letter

No. 2008-07536, we ruled that the county attorney need not release the information held by the district clerk because the information at issue consisted of records of the judiciary that are not subject to release under the Act. *See* Gov't Code §§ 552.003(1)(A), (B) (definition of "governmental body" under Act specifically excludes the judiciary), .021 (Act generally requires disclosure of information maintained by "governmental body"). Next, we ruled that the county attorney must withhold certain information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure and common-law privacy. We also held that the county attorney must withhold certain information under section 552.1175 of the Government Code if the individuals at issue elected to restrict access to their information. Finally, we held that the county attorney must withhold certain information under sections 552.130 and 552.137 of the Government Code. The remaining information was ordered released in accordance with copyright law.

In Open Records Decision No. 673 (2001), we set forth the circumstances under which, pursuant to section 552.301(a) of the Government Code, a governmental body could rely on a ruling from this office as a previous determination. Open Records Decision No. 673 clarified the two types of previous determinations. Based on your arguments and our review, we understand you to argue that Open Records Letter No. 2008-07536 is the first type of previous determination. The first type of previous determination requires that all of the following criteria be met:

> 1. the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code;
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> 2. the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general;
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> 3. the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and
>
> 4. the elements of law, fact, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling.

Open Records Decision No. 673 at 6-7 (2001). In this instance, the first three criterion are met. As to the fourth criterion, however, you state and the request reflects, that the requestor contends that the circumstances upon which Open Records Letter No. 2008-07536 was based have changed. The requestor states that the order of expunction on which we based our prior ruling to withhold information under section 552.101 in conjunction with article 55.03 of the Code of Criminal Procedure has been vacated as a void order. However, you inform us that the new order upon which the requestor relies is not final because the attorney for the individual whose information was expunged has filed an appeal to the order vacating the

original expunction. Thus, you contend that the existing expunction order is still in effect because the new order has yet to become final. Therefore, based on your representations, we find that circumstances on which we based our ruling in Open Records Letter No. 2008-07536 have not changed. Thus, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the county attorney must continue to rely on that ruling as a previous determination and withhold or release the requested information in accordance with Open Records Letter No. 2008-07536. *See* ORD 673. As our ruling is dispositive, we need not address your arguments against the disclosure of the requested information.

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).

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# 326975

Enc. Submitted documents

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