



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2009

Ms. Deborah F. Harrison
Assistant District Attorney
Special Crimes Division, Civil Section
Collin County District Attorney's Office
210 South McDonald, Suite 324
McKinney, Texas 75069

OR2009-18444

Dear Ms. Harrison:

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# 366080.

The Collin County District Attorney's Office (the "district attorney") received a request for e-mails and communications between named individuals and pertaining to a specified case between specified dates.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.107 of the Government Code. You have also notified an interested party of this request for information. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted documents you seek to withhold, which we have marked, are not responsive to the request for information because they do not constitute e-mails or communications. This ruling does not address such non-responsive information and the district attorney need not release the non-responsive information in response to this request.

Next, we note that much of the responsive information is the same information that was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-18125 (2009). Thus, with regard to the submitted information that was previously requested and ruled on by this office, which we have marked, we conclude

¹The district attorney received a clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

that the district attorney must continue to withhold or release that information in accordance with Open Records Letter No. 2009-18125.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will, however, consider your submitted arguments for the remaining information.

We now address your argument under section 552.101 of the Government Code for portions of the remaining responsive information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as article 55.03 of the Code of Criminal Procedure. Article 55.03 concerns the effect of an expunction order and provides the following:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in relevant part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

²As our determination is dispositive, we need not address your remaining arguments against the disclosure of the information subject to the previous determination in Open Records Letter No. 2009-18125.

Id. art. 55.04, § 1. This office has previously determined the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). You inform us some of the remaining information is subject to an order of expunction. You have provided this office with a copy of the expunction order. Accordingly, the information subject to the order of expunction, which we have marked, is confidential under article 55.03, and must be withheld under section 552.101 of the Government Code.³

In summary, this ruling does not address the non-responsive information we have marked and the district attorney need not release that information in response to this request. The district attorney must continue to rely on Open Records Letter No. 2009-18125 as a previous determination and withhold or release the information we have marked as subject to that ruling in accordance with that ruling. The district attorney must withhold the information we have marked in the remaining responsive information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. As no further exceptions are raised for the remaining responsive information, it must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

³As our ruling is dispositive for this information, we do not address your remaining argument against its disclosure.

Ref: ID# 366080

Enc. Submitted documents

c: Requestor
(w/o enclosures)