



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 21, 2010

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

OR2010-00961

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# 367675.

The Collin County District Attorney's Office (the "district attorney") received a request for information related to a specified case and two named prosecutors. You state that some responsive information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the responsive information may be the same information that was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-18004 (2009). In that ruling, we held that the requested information must be withheld under section 552.101 of the Government Code. Thus, to the extent the submitted information was previously requested and ruled on by this office, the district attorney must continue to withhold that information in accordance with Open

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<sup>1</sup>Although you initially raised section 552.107 of the Government Code as an exception to disclosure of the requested information, you have provided no arguments regarding the applicability of this section. Since you have not submitted arguments concerning this exception, we assume that you no longer urge it. *See* Gov't Code §§ 552.301(b), (e), .302.

Records Letter No. 2009-18004.<sup>2</sup> *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 argument for the remaining information.

Section 552.101 of the Government Code 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.

*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

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<sup>2</sup>As 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.

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. As you raise no other exception to disclosure, the remaining submitted information 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 367675

Enc. Submitted documents

c: Requestor  
(w/o enclosures)