



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 9, 2010

Mr. Rodolfo Ramirez  
Assistant District Attorney  
Fort Bend County District Attorney's Office  
301 Jackson Room 101  
Richmond, Texas 77469

OR2010-03410

Dear Mr. Ramirez:

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# 372450.

The Fort Bend County District Attorney's Office (the "district attorney") received a request for photographs relating to nine specified case numbers.<sup>1</sup> You inform us that the district attorney has released information responsive to item number seven of the request. 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 information you submitted. We note that you have not submitted any information relating to item numbers two and six of the request. We therefore assume that the district attorney has released any photographs relating to those two case numbers that existed when the district attorney received the request. If not, then any such information must be released

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<sup>1</sup>We note that the requestor also initially sought access to documents relating to the specified cases, but subsequently narrowed his request to encompass only photographs. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

immediately.<sup>2</sup> See Gov't Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000).

We also note that, because the requestor only seeks access to photographs relating to the specified case numbers, the rest of the submitted information is not responsive to his request. This decision does not address the public availability of the submitted information that is not responsive to the request, and the district attorney need not release that information in response to the request.

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. This exception encompasses information that other statutes make confidential. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

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 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 or any political subdivision of the state and who knows of an order expunging the

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<sup>2</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

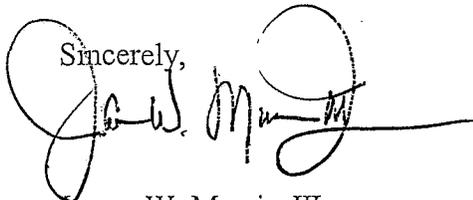
records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

*Id.* art. 55.04, § 1. This office has determined that 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 state, and have provided documentation reflecting, that the submitted photographs are the subject of expunction orders. Based on your representations and documentation and our review of the information at issue, we conclude that the district attorney must withhold the submitted photographs under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure.

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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 372450

Enc: Submitted information

c: Requestor  
(w/o enclosures)