



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2010

Mr. Humberto Aguilera
Escamilla, Poneck & Cruz, LLP
P.O. Box 200
San Antonio, Texas 78291-0200

OR2010-13234

Dear Mr. Aguilera:

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# 392244.

The United Independent School District (the "district"), which you represent, received a request for information relating to an investigation involving a named individual. You state that some of the requested information either has been or will be released. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you submitted.

Initially, we must determine whether the district complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) provides that a governmental body must ask for the attorney general's decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) provides that the governmental body must submit to this office, no later

¹Although you also initially raised section 552.103 of the Government Code, you have submitted no arguments in support of the applicability of that exception. Accordingly, we assume that you no longer claim an exception to disclosure under section 552.103. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us that the district received the instant request for information on April 9, 2010. You also inform us that the district sought clarification of the request on April 20 and received the requestor's response on June 11. *See Gov't Code* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). As we have no indication that the district acted in bad faith in seeking clarification in this instance, we consider the district's ten-business-day period for requesting a decision under section 552.301(b) to have begun on June 11, 2010, the date of the district's receipt of the requestor's response to the request for clarification. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Thus, we consider the district's request for this decision, which was sent by United States Mail meter-marked June 24, 2010, to have been timely submitted.²

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;

²We note that the district timely completed its submissions under section 552.301 by submitting its arguments against disclosure and the information at issue via United States Mail meter-marked July 1, 2010. *See Gov't Code* § 552.301(e).

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

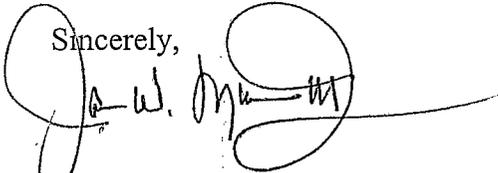
Id. art. 55.04, § 1. This office has determined that the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). You have provided this office with a copy of an expunction order entered by a Webb County district court. We find that the order, which is applicable to records of a specified offense, encompasses the information at issue. We therefore conclude that the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure.³

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.

³As we are able to make this determination, we need not address your claim under section 552.108 of the Government Code.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal stroke extending to the right.

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

JWM/em

Ref: ID# 392244

Enc: Submitted documents

c: Requestor
(w/o enclosures)