



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2011

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

OR2011-11094

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# 425716.

The Fort Bend County District Attorney's Office (the "district attorney") received a request for information relating to the district attorney's prosecution of a named individual. You contend some of the requested information is not subject to the Act. You also claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered your arguments and reviewed the information you submitted. We also have considered the comments we received from the Houston Police Department (the "HPD") and an attorney for the City of Stafford (the "city").¹ See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

¹We note the HPD has submitted information it seeks to withhold from the requestor. This decision is applicable only to the information the district attorney submitted to this office in requesting the decision. See Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision under Gov't Code § 552.301 must submit information at issue or representative samples if information is voluminous).

§ 552.101. This exception encompasses information 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 records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

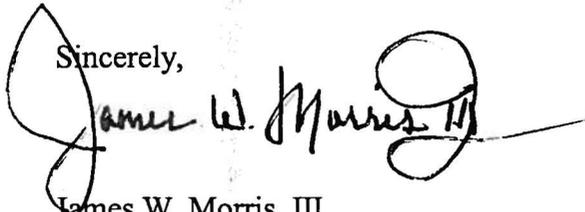
Id. art. 55.04, § 1. This office has determined the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure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

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.

²As we are able to make this determination, we need not address the remaining arguments of the district attorney, the HPD, and the city.

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,

A handwritten signature in black ink, appearing to read "James 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# 425716

Enc: Submitted information

c: Requestor
(w/o enclosures)