



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2012

Ms. Myrna S. Reingold
Galveston County Legal Department
County Courthouse
722 Moody, 5th Floor
Galveston, Texas 77550-2317

OR2012-03614

Dear Ms. Reingold:

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# 448010.

The Galveston County Sheriff's Office (the "sheriff") received two requests from two requestors for all documentation concerning a specified internal investigation. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.107(2) of the Government Code. We have considered the exceptions you claim. We have also received and considered comments submitted by an interested third party. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

We first note, and you acknowledge, that the sheriff did not comply with its deadlines under section 552.301 of the Government Code in requesting this decision. *See id.* § 552.301(a)-(b), (e). Pursuant to section 552.302 of the Government Code, the requested information is therefore 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; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your claims under sections 552.101 and 552.107(2)

of the Government Code can provide compelling reasons for non-disclosure, we will address these exceptions.

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 protected by other statutes, such as articles 55.01 through 55.05 of the Code of Criminal Procedure, which 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 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 the requested information is subject to an expunction order issued by the 56th Judicial District Court. Based on your representation, we conclude the requested information is confidential under article 55.03 of the Code of Criminal Procedure and must be withheld from the requestor on that basis under section 552.101 of the Government Code. As we are able to make this determination, we need not address the sheriff’s remaining argument.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 448010

Enc. Submitted documents

c: Requestor

c: Mr. Gregory B. Cagle
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