



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 8, 2016

Mr. Omar De La Rosa
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2016-13009

Dear Mr. De La Rosa:

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# 613411 (El Paso Ref. No. 16-1026-7288).

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You claim 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 submitted 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 of the Government Code encompasses the confidentiality provisions found in chapter 55 of the Code of Criminal Procedure. 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 records subject to an expunction order are not subject to public disclosure under 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 the submitted information contains information that is the subject of an expunction order, and you seek to withhold that information under article 55.03 of the Code of Criminal Procedure. However, you have not submitted a copy of the expunction order for the information at issue. We nevertheless conclude to the extent the submitted information is the subject of an expunction order, the department must withhold any such information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. To the extent the submitted information is not the subject of an expunction order, the department must release any such information.¹

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

¹In that instance, we note the requestor has a special right of access to some of the information being released. *See* Gov’t Code § 552.023(a).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee Seidlits', written in a cursive style.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/bw

Ref: ID# 613411

Enc. Submitted documents

c: Requestor
(w/o enclosures)