



**THE ATTORNEY GENERAL  
OF TEXAS**

May 23, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable Fred G. Rodriguez  
Bexar County Criminal  
District Attorney  
Bexar County Courthouse  
San Antonio, Texas 78205

LO-89-43

Dear Mr. Rodriguez:

You ask whether records subject to an expunction order may be withheld from disclosure under the Open Records Act, article 6252-17a, V.T.C.S. The requestor has sought "all information" relating to a criminal charge against him that was dismissed and later formed the basis of an expunction order.

You suggest that you may withhold this information from the requestor based on several exceptions to required disclosure under the Open Records Act. We need not consider the applicability of those exceptions, however, because the requestor's right of access is governed by the Code of Criminal Procedure. The Open Records Act is not applicable.

You advise that a criminal charge against the requestor was dismissed in 1983. Subsequently, a district court granted an expunction order on the petition of the requestor. You state that a petition for bill of review has been filed seeking reversal of the expunction order.

Article 55.01 of the Code of Criminal Procedure grants a right to an order of expunction of records relating to an arrest under certain conditions. When an expunction order is granted, the provisions of section 5 of article 55.02 of the Code of Criminal Procedure are applicable:

(a) On receipt of the order, each official or agency or other entity named in the order shall:

(1) return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the petitioner and notify the court of its action; and

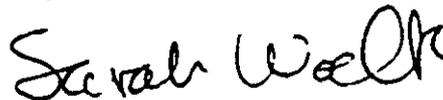
(2) delete from its public records all index references to the records and files that are subject to the expunction order.

(b) The court may give the petitioner all records and files returned to it pursuant to its order.

(c) If an order of expunction is issued under this article, the court records concerning expunction proceedings are not open for inspection by anyone except the petitioner unless the order permits retention of a record under Section 4 of this article and the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested. The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection. (Emphasis added.)

Although your letter indicates that your office has retained records subject to an expunction order, we think that access to such records is still governed by the provisions of article 55.01 of the Code of Criminal Procedure. We do not consider the propriety of your office's retention of the records pending petition for a bill of review. See generally W.V. v. State, 669 S.W.2d 376, 378 (Tex. App. - Dallas 1984, writ ref'd n.r.e.).

Very truly yours,



Sarah Woelk, Chief  
Letter Opinion Section



Rick Gilpin, Chairman  
Opinion Committee

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APPROVED: OPINION COMMITTEE

SW/RG/TGD/bc

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