



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 14, 2011

Ms. Jordan Hale
Assistant Attorney General
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2011-03495

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 412978 (PIR No. 11-29787).

The Office of the Attorney General (the "OAG") received a request for information pertaining to the indictment of a named person for Medicaid fraud. The OAG argues the information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the OAG's claimed exceptions and have reviewed the submitted sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. Gov't Code § 552.101. Articles 55.01 to 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:

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 Public Information Act (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]"). The OAG informs us the requested information is subject to an expunction order. Based on this representation and our review, we conclude the information is confidential under article 55.03 of the Code of Criminal Procedure, and the OAG must withhold it pursuant to section 552.101 of the Government Code.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.

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 cursive script, appearing to read 'Yen-Ha Le'.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 412978

Enc: Submitted documents

c: Requestor
(w/o enclosures)