



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2012

Ms. Sharae Bassett
Assistant City Attorney
City of Beaumont
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2012-04079

Dear Ms. Bassett:

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# 448700.

The City of Beaumont (the “city”) and the Beaumont Municipal Court (the “court”) received requests from two requestors for information related to criminal charges involving a named individual. You state some of the requested information has been released. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.¹ We also have considered the comments we received from one of the requestors and from another interested person. *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).

Initially, we address your statement that “similar information” was the subject of a previous request by the city for a ruling, in response to which this office issued Open Records Letter No. 2011-16038 (2011). You inform us, however, that the facts and circumstances on which the previous ruling was based have changed. Therefore, the city may not withhold any of the

¹To the extent the submitted information is a representative sample of information responsive to the present requests, this letter ruling assumes the submitted information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See Gov’t Code* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

submitted information on the basis of Open Records Letter No. 2011-16038. *See* Open Records Decision No. 673 at 6-7 (2001) (open records letter ruling constitutes first type of previous determination under Gov't Code § 552.301(a) if, among other things, there has been no change in the law, facts, and circumstances on which the ruling was based).

Next, we address the request for information the court received from the second requestor. We note that although the Act is applicable to information “collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body,” Gov't Code § 552.002(a)(1), the Act's definition of “governmental body” “does not include the judiciary.” *Id.* § 552.003(1)(B). Thus, information “collected, assembled, or maintained by or for the judiciary” is not subject to the Act but instead is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). Therefore, the Act does not require the court to release any information in response to the request the court received from the second requestor.² Likewise, to the extent the submitted information is maintained only by the court, any such information is not subject to the Act, and this decision does not address the public availability of any such information. To the extent the submitted information is maintained by the city and is responsive to the first request for information, we will address the city's arguments against its disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”³ Gov't Code § 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;

²We note judicial records may be public under other sources of law. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also* *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered to be public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

³This office will raise section 552.101 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

(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 indicate the submitted information is the subject of a petition for expunction. You do not inform us, however, and the submitted information does not otherwise reveal whether or when the petition was granted. Nevertheless, to the extent an order for expunction of the submitted information has been granted, article 55.03 of the Code of Criminal Procedure prohibits the city from releasing any such information. *See* Crim. Proc. Code art. 55.03. To the extent the submitted information is not subject to an order for expunction, we will determine whether the city may withhold any of the information in question under section 552.103 of the Government Code.

Although you seek to withhold the information submitted as Exhibit B under section 552.103, we note the information in question falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]” unless the information is made confidential under the Act or other law or excepted from disclosure under section 552.108 of the Government Code. Gov’t Code § 552.022(a)(1). Section 552.022(a)(17) provides for required disclosure of “information that is also contained in a public court record[,]” unless the information is made confidential under the Act or other law. *Id.* § 552.022(a)(17). In this instance, the information in Exhibit B consists of a completed investigation made of, for, or by the city that is subject to section 552.022(a)(1) and court documents that are subject to section 552.022(a)(17). Section 552.103 of the Government Code is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4

S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 does not make information confidential for the purposes of section 552.022(a)(1) or (17). Therefore, the information in Exhibit B may not be withheld under section 552.103 of the Government Code.

Lastly, we note the information subject to section 552.022(a)(1) includes a video recording that contains license plate numbers. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country.⁴ See Gov't Code § 552.130(a)(2). This exception makes information confidential for purposes of section 552.022(a)(1). The city must withhold the license plate numbers portrayed in the video under section 552.130 of the Government Code.⁵ The rest of the information in Exhibit B must be released pursuant to section 552.022(a)(1) and (17) of the Government Code.

In summary: (1) the Act does not require the court to release any information in response to the request the court received from the second requestor; (2) to the extent the submitted information is maintained only by the court, any such information is not subject to the Act, and this decision does not address the public availability of any such information; (3) to the extent an order for expunction of any of the submitted information has been granted, article 55.03 of the Code of Criminal Procedure prohibits the city from releasing any such information; and (4) to the extent the submitted information is not subject to an order for expunction, the city (a) must release the information in Exhibit B pursuant to section 552.022(a)(1) and (17) of the Government Code, except for the license plate numbers portrayed in the video recording that must be withheld under section 552.130 of the Government Code and (b) must release the rest of the submitted information.

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.

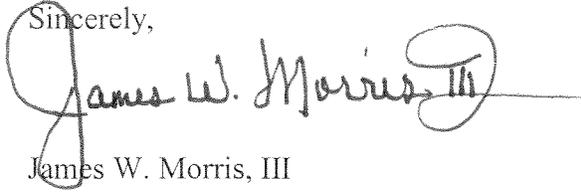
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

⁴Section 552.130 also is a mandatory exception to disclosure. Gov't Code §§ 552.007, .352; ORD 674 at 3 n.4.

⁵We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including the portion of any video depicting a discernible Texas license plate number under section 552.130 of the Government Code.

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 that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 448700

Enc: Submitted information

c: Requestors
(w/o enclosures)