KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 23, 2015

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-19948

Dear Ms. Cost:

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# 580671 (DPS PIR# 15-3247).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified arrest. 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. You raise section 552.101 in conjunction with confidentiality provisions found in chapter 55 of the Code of Criminal Procedure for the requested information. 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 contend the requested information is the subject of an expunction order, and you seek to withhold that information under article 55.03 of the Code of Criminal Procedure. You have submitted an expunction order pertaining to the requested information. Thus, we agree the requested information is confidential under article 55.03 of the Code of Criminal Procedure, and the department must withhold it on that basis under section 552.101 of the Government Code.

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

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

Sincerely,

Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 580671

Enc. Submitted documents

c: Requestor
(w/o enclosures)