



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 31, 2016

Ms. Michelle Buendia  
Assistant City Attorney  
Criminal Law & Police Section  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215

OR2016-07193

Dear Ms. Buendia:

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# 603662 (ORR# 2016-01023).

The Dallas Police Department (the "department") received a request for all records pertaining to a specified internal affairs investigation. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted an audio recording pertaining to the specified internal affairs investigation. To the extent any additional information responsive to this request existed and was maintained by the department on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. This section encompasses information protected by other statutes, such as

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 relevant part:

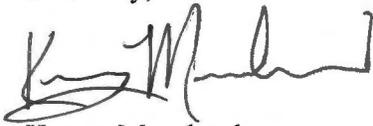
Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

*Id.* art. 55.04, § 1. This office has previously determined that 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 contend some of the submitted information is the subject of an expunction order, and you seek to withhold this information under article 55.03 of the Code of Criminal Procedure. You have submitted an expunction order, which pertains to records relating to a specified criminal offense. However, the information submitted to this office relates solely to an internal affairs investigation that was conducted by the department. This information does not consist of expunged criminal records. Therefore, the department may not withhold the information you indicated under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. As you raise no further exceptions to disclosure, the department must release 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,

A handwritten signature in black ink, appearing to read 'Kenny Moreland', written over a horizontal line.

Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 603662

Enc. Submitted documents

c: Requestor  
(w/o enclosures)