



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 3, 2016

Ms. Vanessa A. Gonzalez  
Counsel for Baylor University  
Bickerstaff Heath Delgado Acosta, L.L.P.  
Building One, Suite 300  
3711 South Mopac Expressway  
Austin, Texas 78745

OR2016-17411

Dear Ms. Gonzalez:

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# 621195 (PIR No. 16-00045).

The Baylor University Police Department (the "department"), which you represent, received a request for certain information pertaining to each incident of assault and sexual assault occurring from January 1, 2010 through May 2, 2016.<sup>1</sup> You state you have released some information to the requestor. 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.

Initially, we note some of the information at issue is subject to a court order of restricted access. The order was entered in accordance with section 58.203 of the Family Code, which states the Texas Department of Public Safety ("DPS") shall certify juvenile law enforcement records are subject to automatic restriction of access under certain circumstances. Fam. Code § 58.203. Section 58.204(b) of the Family Code provides:

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<sup>1</sup>You state the department sought and received clarification of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

(b) On certification of records in a case under Section 58.203, [DPS] may permit access to the information in the juvenile justice information system relating to the case of an individual only:

(1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;

(2) for research purposes, by the Texas Juvenile Justice Department;

(3) by the person who is the subject of the records on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records;

(4) with the permission of the juvenile court at the request of the person who is the subject of the records;

(5) with the permission of the juvenile court, by a party to a civil suit if the person who is the subject of the records has put facts relating to the person's records at issue in the suit; or

(6) with the written permission of the individual, by military personnel, including a recruiter, of this state or the United States if the individual is an applicant for enlistment in the armed forces.

*Id.* § 58.204(b). Moreover, section 58.207 of the Family Code provides, in part:

(a) On certification of records in a case under Section 58.203, the juvenile court shall order:

(1) that the following records relating to the case may be accessed only as provided by Section 58.204(b):

....  
(E) records maintained by a law enforcement agency[.]

(b) [O]n receipt of an order under Subsection (a)(1), the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

*Id.* § 58.207(a)(1)(E), (b). In this instance, the requestor is not one of the entities listed in section 58.204(b) to which access is allowed. Therefore, pursuant to the order of restricted access and section 58.207(b) of the Family Code, the department must respond to this request for information by stating a portion of the requested information does not exist.

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. Section 552.101 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 the information you have indicated is the subject of expunction orders, and you seek to withhold this information under article 55.03 of the Code of Criminal Procedure. You have submitted expunction orders pertaining to the information at issue. Thus, we agree the information you have indicated 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](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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 621195

Enc. Submitted documents

c: Requestor  
(w/o enclosures)