



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 26, 2019

Mr. Jeffrey C. Monk
Administration Manager
Houston Police Department
1200 Travis Street, 10th Floor
Houston, Texas 77002-6000

OR2019-33479

Dear Mr. Monk:

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# 798715 (ORU No. 19-09915).

The Houston Police Department (the "department") received a request for records pertaining to a specified incident and a named individual, and conduct records, and complaints for a named department officer. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.

Initially, we note you have not submitted the requested conduct records or complaints pertaining to the named officer. Although you claim you submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirement of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to this portion of the request existed 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. *See* 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. Section 552.101 encompasses the confidentiality provisions found in 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 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 have submitted an expunction order pertaining to the information at issue. Accordingly, the department must withhold the information at issue subject to the submitted expunction order under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure.¹

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Pearlie Gault", with a long horizontal flourish extending to the right.

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 798715

Enc. Submitted documents

c: Requestor
(w/o enclosures)