



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2007

Mr. John W. Segrest
Criminal District Attorney
McLennan County
219 North 6th Street, Suite 200
Waco, Texas 76701

OR2007-04983

Dear Mr. Segrest:

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# 277078.

The McLennan County District Attorney's Office (the "district attorney") received a request for a specific video introduced into evidence at a murder trial. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code and privileged under Texas Rule of Civil Procedure 192.5. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by interested third parties. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

The submitted videotape constitutes information that was filed with a court. Information that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See* Gov't Code § 552.022(a)(17). Although you assert that the submitted information is excepted under sections 552.108 and 552.111 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived by

the governmental body. *See Open Records Decision Nos. 663 (1999)* (governmental body may waive section 552.111), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, these sections do not constitute other law for the purposes of section 552.022(a)(17), and the submitted information may not be withheld on either of these bases.

The district attorney also raises the attorney work product privilege, which is found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” TEX. R. CIV. P. 2. Accordingly, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to the submitted information, which relates to a criminal case. Therefore, the district attorney may not withhold the submitted information under rule 192.5 of the Texas Rules of Civil Procedure.

The district attorney also asserts that the submitted information is excepted under section 552.101 in conjunction with common-law privacy. Additionally, one of the victim’s surviving family members has submitted comments to our office asserting a privacy interest in the requested information. The United States Supreme Court has recognized that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat’l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570 (2004); *see also* Attorney General Opinion JM-229 (1984) (if release of information about deceased person reveals highly intimate or embarrassing information about living persons, that information must be withheld under common-law privacy). In this instance, the submitted videotape was entered into evidence in open court. Furthermore, the requestor, a member of the media, states that the requested videotape footage was recorded during the trial proceedings and later broadcast on the evening news. Although we appreciate the family’s concerns, we note that information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the district attorney may not withhold the submitted information based on section 552.101 of the Government Code in conjunction with common-law privacy. As the district attorney raises no further exceptions against disclosure, the submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Jordan Johnson". The signature is written in a cursive, flowing style.

Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/eb

Ref: ID# 277078

Enc. Submitted documents

c: Waco Tribune Herald
c/o Tommy Witherspoon
P. O. Box 2588
Waco, Texas 76702-2588
(w/o enclosures)

Mr. Peter K. Rusek
Sheehy, Lovelace & Mayfield, P.C.
510 North Valley Mills Drive
Suite 500
Waco, Texas 76710
(w/o enclosures)