ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2007

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2007-15217

Dear Mr. Risley:

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# 295036.

The City of Victoria (the "city") received two requests for information related to a case number 2007-00025119. You indicate that you will release a portion of the requested information. You claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information.

We note that the submitted information is subject to section 552.022(a) of the Government Code. Section 552.022(a) of the Government Code provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, or, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). In this instance, you indicate that the information is part of a concluded investigation made of, for, or by the city police department. Accordingly, the information must be released under section 552.022(a)(1) of the Government Code, unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law.

[1]Although you raise the work product privilege under section 552.101, the proper exception to raise for the work product privilege is section 552.11. *See* Open Records Decision No. 676 at 6 (2002). Thus, we will consider your argument under this exception.

You claim that the information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 of the Government Code is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under Gov't Code § 552.111 may be waived), 665 at 2 n. 5 (2000) (discretionary exceptions generally). As such, section 552.111 of the Government Code is not "other law" that makes information confidential for the purposes of section 552.022 of the Government Code. Therefore, the city may not withhold the submitted information under section 552.111 of the Government Code.

The attorney work product privilege 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 any of the information at issue, which relates to a criminal case. Therefore, the city may not withhold the submitted information under rule 192.5 of the Texas Rules of Civil Procedure. As you raise no other exception to disclosure of this information, it must be released to the requestors.

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,

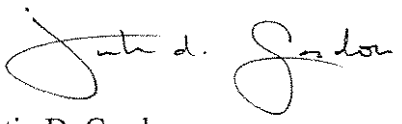
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 295036

Enc. Submitted documents

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