



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2009

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

OR2009-00852

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# 332947.

The City of Victoria (the "city") received a request for information regarding a specified case number. You claim the requested information is excepted from disclosure under sections 552.103, 552.108, 552.111, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) 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, we note that the submitted 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

¹Although you raise the work product privilege under section 552.101, the proper exception to raise for the work product privilege is section 552.111. See Open Records Decision No. 676 at 6 (2002). Thus, we will consider your argument under this exception.

confidential under other law. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.111, and 552.130 of the Government Code. Sections 552.103 and 552.111 of the Government Code are discretionary exceptions to public disclosure that protect the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10 (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, sections 552.103 and 552.111 do not qualify as other law that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold any portion of the submitted information under section 552.103 or 552.111. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.108 and 552.130 of the Government Code, we will address your arguments under these exceptions for the submitted information.

We note the attorney work product privilege is also 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.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information is related to a pending criminal prosecution. Based on your representation, we conclude that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed

public by *Houston Chronicle*). The city may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

Ref: ID# 332947

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.