



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 22, 2009

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

OR2009-00877

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# 332752.

The City of Victoria (the "city") received a request for information pertaining to a specified incident. You claim that a portion of the submitted information is excepted from disclosure under section 552.130 of the Government Code. We also understand you to claim that the submitted information is privileged under rule 192.5 of the Texas Rules of Civil Procedure.<sup>1</sup> 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) 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, the submitted information is part of a concluded investigation made by the city's 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. The

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with the attorney-work product privilege, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

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. We note some of the submitted information may be subject to section 552.101 of the Government Code.<sup>2</sup> Because sections 552.101 and 552.130 of the Government Code are “other law” for the purposes of 552.022(a)(1), we will consider whether these exceptions apply to the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See* Gov’t Code § 411.082(2)(B) (term CHRI does not include driving record information). A portion of the remaining information constitutes CHRI generated by TCIC and NCIC, as well as the FBI. We have marked the information the city must withhold pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

We note that portions of the remaining information are subject to the doctrine of common-law privacy, which is also encompassed by section 552.101. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Accordingly, the city must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note, however, that because this exception protects personal privacy, the requestor has a right of access to her own Texas motor vehicle record information pursuant to section 552.023 of the Government Code.<sup>3</sup> See *id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, the city must withhold the Texas motor vehicle record information pertaining to other individuals, which we have marked, pursuant to section 552.130 of the Government Code.

Finally, we note that the requestor appears to be the spouse of the individual whose private information is at issue. Thus, as her husband's authorized representative, the requestor may have a right of access under section 552.023 to the information marked under section 552.101 in conjunction with common-law privacy and the information marked under section 552.130. See Gov't Code § 552.023(a). To the extent the requestor is the authorized representative of her husband, she has a right of access to her husband's private information, and it may not be withheld under section 552.101 in conjunction with common-law privacy or section 552.130. To the extent the requestor is not her husband's authorized representative, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy, and section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked as CHRI pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government

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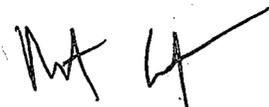
<sup>3</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

Code and federal law. If the requestor is not her husband's authorized representative, the city must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy and section 552.130 of the Government Code. Any remaining information must be released.<sup>4</sup>

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](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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/jb

Ref: ID# 332752

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>4</sup>Should the city receive another request for these same records from a person who would not have a right of access to the private information of the requestor or her husband, the city should resubmit these records and request another decision. See Gov't Code §§ 552.301(a), .302.