



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 30, 2010

Mr. Randall Miller  
Assistant Criminal District Attorney  
Navarro County Criminal District Attorney's Office  
300 West 3<sup>rd</sup> Avenue, Suite 203  
Corsicana, Texas 75110

OR2010-04462

Dear Mr. Miller:

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# 374239.

The Navarro County Criminal District Attorney's Office (the "district attorney") received a request for the complete police investigation report pertaining to an October 20, 2009, incident at a specified address. You claim the submitted incident report is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides:

the following categories of information are public information and not excepted from required disclosure under [the Act] unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted report constitutes the City of Corsicana's police department's investigation of the incident at issue. You state this investigation resulted in the case being forwarded to the district attorney for prosecution, and that prosecution of the case is currently ongoing. We therefore determine the submitted report consists of the City of Corsicana's police department's completed investigation into this matter, and is subject to section 552.022(a)(1). Thus, the district attorney may only withhold this information if it is excepted from disclosure under section 552.108 [of the Government Code] or expressly confidential under "other law." Although you claim that the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code, we note that these are discretionary exceptions to disclosure that protect a 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 No. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Accordingly, sections 552.103 and 552.111 are not "other law" for purposes of section 552.022. Thus, the district attorney may not withhold this report under section 552.103 or section 552.111 of the Government Code. However, the attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure . . . are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." *See* Tex. R. Civ. P. 2. Thus, because the incident report relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to the submitted report and it may not be withheld on that basis. However, because the completed report contains Texas motor vehicle record information subject to section 552.130 of the Government Code, which is "other law" for purposes of section 552.022, we will address that exception.<sup>1</sup>

Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license or permit, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). The district attorney must withhold the Texas

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.<sup>2</sup> The remaining information must be released.<sup>3</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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 374239

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number, a Texas license plate number, and the portion of a photograph that reveals a Texas license plate number, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>The remaining information includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).