



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2010

Ms. Christina R. Sanchez
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2010-08262

Dear Ms. Sanchez:

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# 381764 (File # OP-10-132).

The El Paso County District Attorney's Office (the "district attorney") received a request for information relating to a stolen vehicle. You state that some of the requested information has been released. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note that the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation made of, for, or by the district attorney. Although the district attorney claims section 552.111 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; 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), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 subject to waiver). As such,

section 552.111 is not other law that makes information confidential for the purposes of section 552.022(a)(1). Therefore, the district attorney may not withhold any of the submitted information on the basis of the attorney work product privilege under section 552.111 of the Government Code. We note that the attorney work product privilege also 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). The Texas Rules of Civil Procedure are only applicable, however, to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. Thus, because the submitted information is related to a criminal investigation, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure is not applicable in this instance. Therefore, the district attorney may not withhold any of the submitted information under Texas Rule of Civil Procedure 192.5. However, we will consider the district attorney’s claims under section 552.101 of the Government Code, which is a confidentiality provision for the purposes of section 552.022(a)(1), and section 552.108.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. The district attorney claims section 552.101 in conjunction with article 39.14 of the Code of Criminal Procedure. We note, however, that article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. Article 39.14 does not expressly make information confidential for the purposes of section 552.101 of the Government Code. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). We therefore conclude that the district attorney may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with article 39.14 of the Code of Criminal Procedure.¹

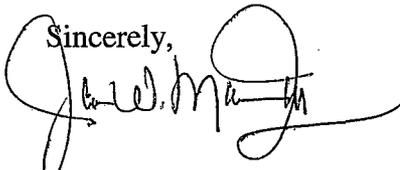
Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state that the information at issue is related to a case that was declined by the district attorney and did not result in a conviction or a deferred adjudication. Based on your representations, we conclude that section 552.108(a)(2) is generally applicable to the submitted information.

¹Although the district attorney also claims section 552.101 in conjunction with Texas Rule of Civil Procedure 192.5, we note that section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1-3 (2002).

We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing 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). *See* 531 S.W.2d at 186-88. The district attorney 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 district attorney may withhold the rest of the submitted information under section 552.108(a)(2) of the Government Code. As we are able to make this determination, we need not address the district attorney's other claims under section 552.108.

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, toll free, at (888) 672-6787.

Sincerely,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 381764

Enc: Submitted documents

c: Requestor
(w/o enclosures)