



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2010

Ms. Deborah F. Harrison
Assistant District Attorney
Special Crimes Division
Collin County Courthouse
210 South McDonald, Suite 324
McKinney, Texas 75069

OR2010-13255

Dear Ms. Harrison:

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#391929.

The Collin County District Attorney's Office (the "district attorney") received a request for the complete file for Cause No. 401-04690-2009. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.111, 552.117, 552.130, 552.132, 552.1325, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information are subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

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

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information includes court-filed documents. These documents are subject to subsection 552.022(a)(17). Therefore, the district attorney may only withhold this information if it is confidential under "other law." Although the district attorney raises sections 552.103, 552.108, and 552.111 of the Government Code for this information, these sections are discretionary exceptions 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103), 177 (1977) (governmental body may waive statutory predecessor to section 552.108); 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived). As such, sections 552.103, 552.108, and 552.111 do not make information confidential for the purposes of section 552.022. Therefore, the district attorney may not withhold the court-filed documents subject to section 552.022 under sections 552.103, 552.108, and 552.111. The attorney work product privilege is also found at rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has held the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (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 submitted information 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 any of the submitted information. As you raise no further exceptions to disclosure of the court-filed documents, they must be released. However, we will consider your arguments against disclosure of the information not subject to section 552.022 of the Government Code.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code.¹ Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

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

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007, a "child" is person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we find that the majority of the remaining information pertains to alleged juvenile delinquent conduct that occurred after September 1, 1997. Further, we note none of the exceptions in section 58.007 apply in this instance. Therefore, the information involving alleged juvenile delinquent conduct are confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code on that basis.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). Section 552.108(a)(4) is applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You contend the remaining information was prepared by an assistant district attorney in anticipation of or in preparation for trial. Thus, you assert the remaining information reflects the mental impressions and legal reasoning of the assistant district attorney. Based upon your representations and our review, we find section 552.108(a)(4) is applicable to the

remaining information. Accordingly, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.²

In summary, the district attorney must withhold the information pertaining to alleged juvenile delinquent conduct under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of the court-filed documents, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code. The court-filed documents must be released.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/em

Ref: ID#391929

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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