



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2010

Ms. Paula Rosales
Assistant District Attorney
Dallas County District Attorney
133 North Riverfront Boulevard
Dallas, Texas 75207-4399

OR2010-14149A

Dear Ms. Rosales:

This office issued Open Records Letter No. 2010-14149 on September 17, 2010. We have examined this ruling and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on September 17, 2010. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code).

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 401781.

The Dallas County District Attorney (the "district attorney") received a request for all investigation notes, interview notes, recorded interviews, and all other documents relating to a specified cause number. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the requested information, Exhibits H and K and the letter in Exhibit J, was the subject of a previous ruling issued by this office, Open Records Letter No. 2010-10841 (2010). In that ruling, this office concluded that the district attorney must withhold bank account numbers under section 552.136 of the Government Code and an e-mail address under section 552.137 of the Government Code and that the district attorney

may withhold the social security number under section 552.147 of the Government Code but that the remaining information must be released. You now argue this information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. Section 552.007 of the Government Code, however, provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); see also Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law).* Thus, pursuant to section 552.007, the district attorney may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you now raise sections 552.108 and 552.111 for the previously released information, these sections are general exceptions to disclosure that do not prohibit the release of information or make information confidential. *See Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 586 (1991) (governmental body may waive statutory predecessor to section 552.108); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally).* Therefore, with regard to the portion of the submitted information that was previously ruled upon by this office, the district attorney may not now withhold such information under section 552.108 or section 552.111 of the Government Code. Thus, we conclude the district attorney must continue to rely on Open Records Letter No. 2010-10841 as a previous determination and withhold or release Exhibits H and K and the letter in Exhibit J in accordance with that ruling. *See Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).* However, with respect to the remaining information in Exhibit J and the remaining exhibits that were not previously ruled upon in Open Records Letter No. 2010-10841, we will address your arguments against disclosure of this information.

Next, we note the remaining information is subject to section 552.022 of the Government Code, which provides in relevant part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, 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:

(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 remaining documents are part of a completed investigation made by the district attorney. A completed investigation must be released under section 552.022(a)(1), unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. You claim this information is excepted from disclosure under section 552.111 of the Government Code. As previously discussed, section 552.111 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(1). *See* ORD 677 at 8. Therefore, the district attorney may not withhold any of the remaining information under section 552.111 of the Government Code. 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. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.101, 552.108, 552.130, 552.137, and 552.147 of the Government Code, we will consider your claims under these sections for the remaining information.

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); Open Records Decision No. 434 at 2-3 (1986). You contend the submitted information is prosecutorial work product prepared in anticipation of or in preparation for criminal

litigation. Based upon your representations, we find section 552.108(a)(4) is applicable to the information at issue. Accordingly, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government Code.¹

In summary, the district attorney must continue to rely on Open Records Letter No. 2010-10841 and withhold or release the information in Exhibits H and K and the letter in Exhibit J in accordance with that ruling. The district attorney may withhold the remaining information under section 552.108(a)(4).

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 401781

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.