



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2010

Ms. Linda Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2010-15999

Dear Ms. Champion:

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# 397693.

The City of Victoria (the "city") received a request for information pertaining to case number 2009-00014765 and a specified location. You state you will release some of the requested information upon payment of charges. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.111 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure.¹ We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information consists of a completed investigation subject to section 552.022(a)(1) of the Government Code. Section 552.022(a) provides, in relevant part:

¹You contend a portion of the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with the "attorney work product privilege." We therefore understand you to claim this information is excepted from disclosure pursuant to the attorney work product privilege of section 552.111 of the Government Code and privileged pursuant to rule 192.5 of the Texas Rules of Civil Procedure. We note this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

(a) [T]he 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 completed investigation must be released pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. *See id.* You claim this information is subject to section 552.111 of the Government Code. Section 552.111 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not "other law" that makes information expressly confidential for purposes of section 552.022. *See Open Records Decision Nos. 663 at 5 (1999) (governmental body may waive section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally).* Consequently, the city may not withhold any of the submitted information pursuant to section 552.111 of the Government Code. However, the Texas Supreme Court has held the 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, 336 (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 the submitted information, which pertains to a criminal case. Therefore, the city may not withhold any portion of the submitted information at issue under rule 192.5. However, we note portions of the submitted information are subject to sections 552.101, 552.1175, and 552.130 of the Government Code.² Because these exceptions are other laws for the purposes of section 552.022(a)(1), we will consider their applicability to the information at issue.

Section 552.101 of the Government Code excepts from public 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, such as chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See Gov't Code § 411.083(a); Open Records Decision No. 565 (1990).* 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems

²The Office of the Attorney General will raise mandatory exceptions like sections 552.1175 and 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

confidential CHRI that the Department of Public Safety ("DPS") maintains, except that 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. The submitted information contains CHRI that is confidential under section 411.083. Thus, the city must withhold this information, which we have marked, under section 552.101 of the Government Code.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). A portion of the remaining information, which we have marked, relates to a peace officer employed by the city's police department (the "department") and is held by the department in its investigative capacity as a law enforcement entity. Thus, to the extent the telephone numbers and home address we have marked relate to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b), the information must be withheld from

disclosure pursuant to section 552.1175 of the Government Code; however, any cellular telephone numbers may be withheld only to the extent a governmental body does not pay for the cellular telephone service. Conversely, if the peace officer at issue does not elect to restrict access to the information in accordance with section 552.1175(b) or a governmental body pays for the cellular telephone service, the marked information may not be withheld pursuant to section 552.1175.

Section 552.130 of the Government Code provides 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 section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own Texas motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Upon review, we find portions of the submitted information consist of Texas motor vehicle record information of individuals who are not the requestor. Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. To the extent the telephone numbers and home address we have marked relate to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b), the information must be withheld from disclosure pursuant to section 552.1175 of the Government Code; however, any cellular telephone numbers may be withheld only to the extent a governmental body does not pay for the cellular telephone service. The city must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code. The remaining information must be released.³

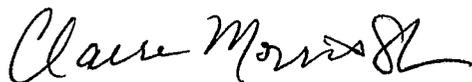
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

³We note the information being released in this instance includes information that may be confidential with respect to the general public. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 397693

Enc. Submitted documents

c: Requestor
(w/o enclosures)