



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 18, 2011

Mr. David Van Brunt Price  
Assistant Criminal District Attorney  
Grayson County District Attorney's Office  
200 South Crockett, Suite 116A  
Sherman, Texas 75090

OR2011-00839

Dear Mr. Price:

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# 406145.

The Grayson County District Attorney's Office (the "district attorney") received a request for all information related to a named individual's decision regarding offense report number 404974. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, 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 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:

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

...

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

Gov't Code § 552.022(a)(1), (17). The submitted information consists of a completed report that is subject to section 552.022(a)(1) and a court-filed document that is subject to section 552.022(a)(17). The district attorney may only withhold the completed report if it is excepted by section 552.108 or confidential under "other law." The district attorney may only withhold the submitted court-filed 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 the court-filed document, 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. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 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). As such, sections 552.103, 552.108, and 552.111 are not "other law" for purposes of section 552.022(a)(17). Additionally, although you raise sections 552.103 and 552.111 for the completed report, these sections are not "other law" for purposes of section 552.022(a)(1). Therefore, the district attorney may not withhold the completed report under section 552.103 or section 552.111 and may not withhold the court-filed document under section 552.103, section 552.108, or section 552.111. The attorney work product privilege is also found at rule 192.5 of the Texas Rules of Civil Procedure. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001) (Texas Rules of Civil Procedure are "other law" within meaning of section 552.022). 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 document, it must be released. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we consider your argument under this section for the completed report.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, one of the pages in the submitted incident report is identical to the court-filed document. You have not provided any arguments explaining how the release of this document, the content of which is public information, would interfere with the detection, investigation, or prosecution of crime. Thus, the district attorney may not withhold this page from the submitted incident report on the basis of section 552.108(a)(1). You indicate the remaining portions of the submitted incident report pertain to a pending criminal trial. Based on this representation and our review, we conclude the release of most of this information would

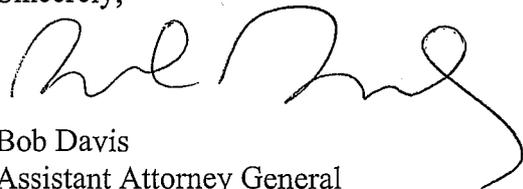
interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the page that is identical to the court-filed document and basic information, the district attorney may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code. The district attorney must release the submitted court-filed document pursuant to section 552.022(a)(17) of the Government Code, and must release the page that is identical to the court-filed document and basic information from the submitted report.

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/eb

Ref: ID# 406145

Enc. Submitted documents

c: Requestor  
(w/o enclosures)