ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2011

Mr. James M. Tirey
County Attorney
Hale County
500 Broadway, Suite 340
Plainview, Texas 79072

OR2011-08492

Dear Mr. Tirey:

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# 420870.

The Hale County Attorney's Office (the "county attorney") received a request for the surveillance tape capturing an incident at Hale Center High School involving two named individuals on a specified date. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code, and 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 video recording is part of a completed investigation, which is subject to section 552.022 of the Government Code. Pursuant to section 552.022(a)(1) of the Government Code, completed investigations are expressly public unless they either are excepted under section 552.108 of the Government Code or are expressly confidential under other law. Gov't Code § 552.022(a)(1). You claim the submitted information is excepted

[1]Although you raise section 552.101 of the Government Code in conjunction with the attorney work product privilege, 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). As the submitted information is subject to section 552.022, rule 192.5 of the Texas Rules of Civil Procedure is the proper exception to raise when claiming the work-product privilege in this instance.

under section 552.103 of the Government Code. This section, however, is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). As such, it is not other law that makes information confidential for the purposes of section 552.022. Consequently, the county attorney may not withhold the submitted video recording under section 552.103 of the Government Code. However, the Texas Supreme Court has held "[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, 336 (Tex. 2001). We will therefore consider your assertion of the attorney work product privilege under Texas Rule of Civil Procedure 192.5 for the submitted video recording. You also raise section 552.101 of the Government Code, which does constitute "other law" that makes information confidential for the purposes of section 552.022. Additionally, information subject to section 552.022(a)(1) may be excepted under section 552.108 of the Government Code. Accordingly, we will consider your arguments under these sections for the submitted information.

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 section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides in pertinent part 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;
> >
> > (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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are

confidential under section 58.007. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You inform our office the submitted information involves a sixteen year old suspect who has been charged with assault causing bodily injury. As such, this information constitutes a juvenile law enforcement record that is confidential pursuant to section 58.007(c). Further, it does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the county attorney must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.[2]

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,

Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 420870

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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