



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2011

Ms. Tiffany Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-17094

Dear Ms. Evans:

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# 436501 (GC No. 18912).

The City of Houston (the "city") received a request for: (1) the attendance books from a specified code enforcement hearing and a specified commissioner's meeting; (2) a specified newspaper article used at the prosecution of specified citations; (3) evidence from a specified website used at the prosecution of the same citations; and (4) a specified Houston Police Department Internal Affairs Division complaint. You claim the submitted information is privileged under Rule 192.5 of the Texas Rules of Civil Procedure. We have considered your argument and reviewed the submitted information.

We first note you have submitted information responsive to items two and three of the request. To the extent information responsive to items one and four of the request existed on the date the city received the request, we assume you have released such information. If you have not released any such information to the requestor, you must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You acknowledge the submitted information is from a completed investigation, which is subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(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 attorney work product privilege is found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that “[t]he 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, 337 (Tex. 2001). We note, 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 the submitted information and it may not be withheld on that basis.

We note the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. As your raise no further arguments, the city must release the submitted information in accordance with copyright law.

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,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 436501

Enc. Submitted documents

c: Requestor
(w/o enclosures)