



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2012

Ms. Myrna S. Reingold
Legal Department
Galveston County
722 Moody, Fifth Floor
Galveston, Texas 77550

OR2012-07203

Dear Ms. Reingold:

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# 453710.

The Galveston County Criminal District Attorney's Office (the "district attorney's office") received a request for the district attorney's investigative file regarding a specified offense. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹Although you also raise the attorney work product privilege under section 552.101 of the Government Code in conjunction with Texas Rule of Civil Procedure 192.5 and the attorney-client privilege under section 552.101 in conjunction with Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

(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 submitted information constitutes a completed investigation subject to section 552.022(a)(1). Although you raise sections 552.107 and 552.111 of the Government Code for this information, sections 552.107 and 552.111 are discretionary in nature and do not make information confidential under the Act. *See* Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.111), 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 676 at 10-11 (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As such, the district attorney's office may not withhold the submitted information under section 552.107 or section 552.111. However, the Texas Supreme Court has held the Texas Rules of Civil Procedure and Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). The attorney-client privilege is also found under rule 503 of the Texas Rules of Evidence, and the attorney work product privilege is also found under rule 192.5 of the Texas Rules of Civil Procedure. Accordingly, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503. 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 information at issue, and the information may not be withheld on that basis. However, section 552.101 of the Government Code protects information made confidential under law. Therefore, we will consider the applicability of this exception as well as your claims under section 552.108 of the Government Code and Texas Rule of Evidence 503 to the submitted information.

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. Section 552.101 encompasses information other statutes make confidential. Prior to its repeal by the Seventy-fourth Legislature, section 51.14 of the Family Code provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591; *see also* Open Records Decision No. 181 (1977) (concluding former section 51.14(d) of the Family Code excepts police reports that identify juvenile suspects or furnish basis for their identification). Despite the repeal of section 51.14, law enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential pursuant to section 51.14. Former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for

prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14(d) (repealed 1995). A “child” is defined as a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). The submitted information pertains to an incident that occurred prior to January 1, 1996, and involves a defendant who qualified as a “child” at the time of the offense. Further, the requestor does not fall within one of the categories in section 51.14(d) under which inspection of the records would be permitted. Accordingly, the submitted information is confidential under former section 51.14 and the district attorney’s office must withhold it in its entirety under section 552.101.²

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

²As our ruling for the submitted information is dispositive, we do not address your remaining arguments against its release.

Ref: ID# 453710

Enc. Submitted documents

c: Requestor
(w/o enclosures)