



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2012

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

OR2012-19307

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# 472528.

The City of Victoria (the "city") received two requests from different requestors for information pertaining to two specified incidents. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b)(2) of the Government Code provides:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

¹Although 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 No. 677 (2002). Section 552.111 of the Government Code is the proper exception to claim when asserting the work-product privilege for information not subject to section 552.022 of the Government Code.

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(b)(2). Section 552.108(b)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you have not provided any explanation of how the submitted information pertains to a closed criminal investigation or prosecution that did not result in a conviction or deferred adjudication. Consequently, we find you have failed to demonstrate the applicability of section 552.108(b)(2) of the Government Code to the submitted information, and the city may not withhold the submitted information on that basis.

You next assert the submitted information is protected from disclosure because it is attorney work product. Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This exception encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as:

(1) [M]aterial prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5(a). A governmental body seeking to withhold information under this exception bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative. *Id.*; ORD 677 at 6-8. In order for this office to conclude that the information was made or developed in anticipation of litigation, we must be satisfied that:

a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

Nat'l Tank Co. v. Brotherton, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204; ORD 677 at 7.

Upon review, we find you have failed to demonstrate any of the submitted information consists of materials prepared or mental impressions developed in anticipation of litigation or for trial by a party or a representative of a party. Accordingly, the city may not withhold any of the submitted information under the work product privilege of section 552.111 of the Government Code.

Section 552.130 of the Government Code exempts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; a motor vehicle title or registration issued by an agency of this state or another state or country; or a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.² *Id.* § 552.130(a). Therefore, the city must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.³ As you raise no further exceptions to disclosure, the remaining information must be released.⁴

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

³We note the submitted information contains motor vehicle record information pertaining to the first requestor. Additionally, we note the second requestor is the authorized representative of the first requestor. Thus, the requestors have a special right of access to this information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, it must again seek a ruling from this office.

⁴We note the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 472528

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)