



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2013

Ms. J. Macklin Milligan  
Assistant District Attorney  
Office of the General Counsel  
County of Harris  
1201 Franklin, Suite 600  
Houston, Texas 77002-1901

OR2013-22015

Dear Ms. Milligan:

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# 508975.

The Harris County District Attorney's Office (the "district attorney's office") received a request for the memorandum or notations from the district attorney's office's files setting forth the reason for dismissal of each of seven specified cases. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information pertains to completed investigations and, thus, is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides a completed investigation is public information unless it is confidential under the Act or other law or excepted from disclosure under section 552.108. Gov't Code § 552.022(a)(1). You claim section 552.111 of the Government Code for the submitted information. Section 552.111 is a discretionary exception and does not make information confidential; therefore, the district attorney's office may not withhold any of the submitted information under this exception. *See id.* § 552.007; Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). The attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held "[t]he

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<sup>1</sup>Although you do not raise section 552.111 of the Government Code in your brief, we understand you to raise this exception based on the substance of your argument.

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 criminal cases, 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, pursuant to section 552.022(a)(1), we will consider your claim under section 552.108 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the documents submitted as Appendix B are part of closed prosecutions that did not result in conviction or deferred adjudication because the charges in each case were dismissed. Based on your representations and our review, the district attorney's office may withhold Appendix B under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

Ref: ID# 508975

Enc. Submitted documents

c: Requestor  
(w/o enclosures)