



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 6, 2014

Mr. Bill Delmore  
Assistant District Attorney  
9th Judicial District  
Montgomery County  
207 West Phillips, 2nd Floor  
Conroe, Texas 77301

OR2014-03900

Dear Mr. Delmore:

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# 516043.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for the files pertaining to case number 11-266498, including "all handwritten notes and documents contained within the file as well as anything written on or in the file itself." You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022(a) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless the information is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). You indicate the submitted information consists of records of a completed investigation made by or for the district attorney's office. Accordingly, the submitted information is subject to section 552.022(a)(1). Although you seek to withhold the submitted information under section 552.111 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived.

§ 552.007; Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under Gov't Code § 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 subject to waiver). Therefore, the district attorney's office may not withhold any of the submitted information under section 552.111 of the Government Code. We note the attorney work product privilege is found at rule 192.5 of the Texas Rules of Civil Procedure, which have been held to be "other law" for purposes of section 552.022(a). See *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Those rules are only applicable, however, to "actions of a civil nature." See TEX. R. CIV. P. 2. Thus, rule 192.5 is not applicable to the responsive records of a criminal case, and the district attorney's office may not withhold any of the submitted information on the basis of Texas Rule of Civil Procedure 192.5. However, we will consider your arguments 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 concluded in a result other than conviction or deferred adjudication. 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to the submitted information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>1</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/>

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<sup>1</sup>As our ruling is dispositive, we need not consider your remaining argument against disclosure of the submitted information.

[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,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with a large, stylized "Y" at the end.

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/ac

Ref: ID# 516043

Enc. Submitted documents

c: Requestor  
(w/o enclosures)