



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2014

Ms. Savannah Gonzalez  
Assistant Criminal District Attorney  
County of Hidalgo  
100 North Closner, Room 303  
Edinburg, Texas 78539

OR2014-15619

Dear Ms. Gonzalez:

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# 535204.

The Hidalgo County District Attorney's Office (the "district attorney's office") received a request for a specified police report, and "any other documents that can legally be disclosed" that relate to the case.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 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 of the Government Code. Section 552.022(a) provides, in relevant 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:

---

<sup>1</sup>You state the district attorney's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(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 consists of a completed investigation made by the district attorney's office. The district attorney's office must release the submitted information pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise sections 552.107 and 552.111 of the Government Code for the entirety of the submitted information, these sections are discretionary exceptions to disclosure and do not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district attorney's office may not withhold any of the submitted information under section 552.107 or section 552.111. However, the Texas Supreme Court has held the Texas Rules of Evidence and the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). The attorney-client privilege is also found under Texas Rule of Evidence 503, and the attorney work product privilege is also found under Texas Rule of Civil Procedure 192.5. 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 in this instance. Further, you also raise section 30.006 of the Civil Practice and Remedies Code, which is a civil discovery privilege under the Civil Practice and Remedies Code; it is not a discovery privilege found in either the Texas Rules of Civil Procedure or the Texas Rules of Evidence and therefore is not "other law" for purposes of section 552.022. Accordingly, we determine information subject to section 552.022 may not be withheld from disclosure on the basis of section 30.006 of the Civil Practice and Remedies Code. However, we will consider the applicability of Texas Rule of Evidence 503 to the submitted information. Further, as information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code and section 552.101 makes information confidential, we will consider your arguments against disclosure under these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 58.007 of the Family Code. Under section 58.007(c), juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential. *See* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Section 58.007 provides, in relevant part, the following:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access the electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under [the Act] or other law.

*Id.* § 58.007(c), (e), (j). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the submitted information involves alleged juvenile delinquent conduct that occurred after September 1, 1997. As such, this information constitutes a juvenile law enforcement record that is generally confidential under section 58.007(c). We note, and you acknowledge, the requestor in this instance is the authorized representative of one of the juveniles at issue in the report who is now an adult; thus, the requestor has a right to inspect or copy law enforcement records concerning his client. *See id.* § 58.007(e). Section 58.007(j)(1) provides any personally identifiable

information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *Id.* § 58.007(j)(1). Further, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will consider the remaining exceptions to disclosure you have raised.

Section 552.108 of the Government Code provides, in part,

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993) (orig. proceeding), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. You state, and we agree, the instant request for information encompasses the district attorney's office's entire prosecution file. Thus, you argue release of the information at issue would reveal the mental impressions or legal reasoning of prosecutors. Based on your representations and our review of the submitted information, we agree section 552.108(a)(4) is applicable to the submitted information.

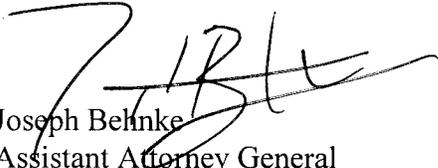
We note, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*. *See* 531 S.W.2d 177 (Tex.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

information under section 552.108(a)(4) of the Government Code and the holding in *Curry*.<sup>2</sup> However, in releasing basic information, the district attorney's office must withhold the identifying information of the other juvenile arrestees pursuant to section 58.007(j)(1) of the Family Code.<sup>3</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,

  
Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 535204

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

<sup>3</sup>We note this requestor has a special right of access under section 58.007(e) of the Family Code to the information being released. Therefore, if the district attorney's office receives another request for this information from a different requestor, it must again seek a ruling from this office.