



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 2, 2007

Ms. Holly C. Lytle  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2007-12863

Dear Ms. Lytle:

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# 290737.

The El Paso County District Attorney's Office (the "district attorney") received a request for the complete prosecution file for a specified case. You state that you will release most of the information, but claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted documents include an ST-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety ("DPS") or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In the present request, the requestor has not provided the required information. Accordingly, the district attorney must withhold the accident report form

submitted in Attachment B, which we have marked, pursuant to section 550.065(b) of the Transportation Code.

Next, we note that the remaining information is subject to section 552.022(a) of the Government Code. Section 552.022(a) of the Government Code provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, or, or by a governmental body, except as provided by Section 552.108.” Gov’t Code § 552.022(a)(1). In this instance, the remaining information consists of a completed investigation made of, for, or by the district attorney. Accordingly, the information must be released under section 552.022(a)(1) of the Government Code, unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. You claim that a portion of the remaining information, Attachment D, is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 of the Government Code is a discretionary exception that protects a governmental body’s interests and may be waived. *See* 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). As such section 552.111 of the Government Code is not “other law” that makes information confidential for the purposes of section 552.022 of the Government Code. Therefore, the district attorney may not withhold any of the information in Attachment D under section 552.111 of the Government Code.

The attorney work product privilege is found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” TEX. R. CIV. P. 2. Accordingly, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to any of the information at issue, which relates to a criminal case. Therefore, the district attorney may not withhold any of the information in Attachment D under rule 192.5 of the Texas Rules of Civil Procedure.

However, since section 552.022(a)(1) of the Government Code provides that information made public under that section may be excepted from disclosure under section 552.108 of the Government Code, we will address the district attorney’s section 552.108 claim as it pertains to the remaining information at issue. Furthermore, because sections 552.101 and 552.130 of the Government Code constitute “other law” for purposes of section 552.022 of the Government Code, we will also consider 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 criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision

No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the DPS maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from the DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F of the Government Code. The information in Attachment C constitutes CHRI that is confidential under section 411.083, and that therefore must be withheld under section 552.101 of the Government Code.<sup>1</sup>

Section 552.108 of the Government Code provides in pertinent 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). Section 552.108(a)(4) is applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. In this instance, the information in Attachment D consists of

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

handwritten attorney notes. You state that the information in Attachment D was prepared by an attorney representing the state in anticipation of litigation or in the course of preparing for litigation and that this information reflects the attorney's mental impressions and legal reasoning. Based on your representations and our review, we conclude that section 552.108(a)(4) is applicable to the information in Attachment D.

Section 552.130 of the Government Code requires the district attorney to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or] a motor vehicle title or registration issued by an agency of this state; or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130. Except for the information we have marked for release, the district attorney must withhold the Texas motor vehicle record information you have marked in Attachment B under section 552.130 of the Government Code.

In summary, the district attorney must withhold the submitted accident report form pursuant to section 550.065(b) of the Transportation Code. The district attorney must withhold Attachment C under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The district attorney may withhold Attachment D under section 552.108(a)(4) of the Government Code. Except for the information we have marked for release, the district attorney must withhold the Texas motor vehicle record information you have marked in Attachment B under section 552.130 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

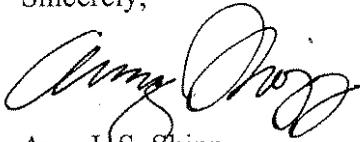
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/mcf

Ref: ID# 290737

Enc. Submitted documents

c: Mr. Brett Duke  
The Law Offices of Brett Duke, P.C.  
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El Paso, Texas 79902  
(w/o enclosures)