



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 18, 2009

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

OR2009-02079

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# 335158.

The City of Victoria (the "city") received a request for four specified incident reports. You indicate that some of the requested information has been released to the requestor. We understand you to claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure.¹ We have considered the exceptions you claim and reviewed the submitted information.

We note that a portion of the submitted information is subject to section 552.022(a) of the Government Code. Section 552.022(a) 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 submitted information reflects that report number 2008-000242333 is part of a concluded

¹You argue the Victoria County District Attorney's (the "district attorney") Prosecution Charge Report is excepted from disclosure pursuant to section 552.101 in conjunction with the "attorney work product privilege." We therefore understand you to claim this information is privileged pursuant to rule 192.5 of the Texas Rules of Civil Procedure. However, we note that this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

criminal investigation made by the city's police department. Accordingly, the information pertaining to that report 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 seek to withhold the district attorney's Prosecution Charge Report for report number 2008-000242333 pursuant to rule 192.5 of the Texas Rules of Evidence, and the driver's license numbers contained in this report under section 552.130 of the Government Code. 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. We note that the submitted information reflects report number 2008-000242333 pertains to a criminal case. Accordingly, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to the district attorney's Prosecution Charge Report for report number 2008-000242333. Therefore, the city may not withhold the information at issue under rule 192.5 of the Texas Rules of Civil Procedure. We note, however, that section 552.130 of the Government Code is "other law" for the purposes of 552.022(a)(1). Therefore, we will consider whether this exception is applicable to the driver's license numbers contained in report number 2008-000242333.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). You contend that report number 2008-00003275 is confidential under section 261.201. We find, however, that report number 2008-00003275

neither consists of nor contains files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). We therefore conclude that the city may not withhold any portion of report number 2008-00003275 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, you assert report numbers 2008-00047816 and 2008-00051838 are excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report numbers 2008-00047816 and 2008-00051838 relate to pending criminal investigations and prosecutions. Based on these representations and our review of the information at issue, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crimes. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186. The city must release basic information, including detailed descriptions of the offenses, even if this information does not literally appear on the front page of an offense or arrest report. *See id.* at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold report numbers 2008-00047816 and 2008-00051838 under section 552.108(a)(1) of the Government Code.²

You claim the Texas motor vehicle record information contained in report numbers 2008-00003275 and 2008-000242333 is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator’s license, driver’s license, title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). However, the requestor has a right of access to her own Texas motor vehicle record information pursuant to section 552.023 of

²As we are able to resolve this issue under section 552.108, we do not address your other claim for exception of the submitted information, except to note that basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a) (“a person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Further, the requestor is the spouse of one of the individuals whose Texas motor vehicle record information is at issue. Thus, the requestor may have a right of access to her husband’s Texas motor vehicle record information under section 552.023. *See Gov’t Code* § 552.023(a). If the requestor is the authorized representative of her husband, she has a right of access to her husband’s information, and it may not be withheld from her under section 552.130. If the requestor is not her husband’s authorized representative, the city must withhold the husband’s Texas motor vehicle record information, as well as the information pertaining to individuals other than the requestor, all of which we have marked, pursuant to section 552.130 of the Government Code.

In summary, with the exception of basic information, the city may withhold report numbers 2008-00047816 and 2008-00051838 under section 552.108(a)(1) of the Government Code. If the requestor is not acting as her husband’s authorized representative, the city must withhold the husband’s motor vehicle record information, which we have marked, pursuant to section 552.130 of the Government Code. If the requestor is acting as her husband’s authorized representative, her husband’s motor vehicle record information must be released.³ The city must withhold the remaining Texas motor vehicle record information that we have marked pursuant to section 552.130. The remaining information must be released to the requestor.⁴

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.

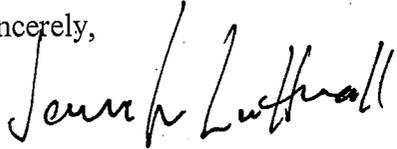
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

³We note that the information being released contains confidential information to which the requestor has a right of access. *See Gov’t Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). However, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

⁴We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to her social security number and her husband’s social security number if the requestor is acting as her husband’s authorized representative. *See generally Gov’t Code* § 552.023(a).

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 at (512) 475-2497.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J" and "L".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 335158

Enc. Submitted documents

c: Requestor
(w/o enclosures)