



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2009

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

OR2009-04892

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# 340321.

The City of Victoria (the "city") received a request for information related to a specific case. You claim that the submitted information is privileged under rule 192.5 of the Texas Rules of Civil Procedure.¹ We have considered your arguments and reviewed the submitted information.

We note the submitted information is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) 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 documents consist of a concluded investigation made by the city's police department. 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. The Texas Supreme Court has held that "[t]he Texas Rules of Civil Procedure is '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.

¹ Although you raise section 552.101 of the Government Code in conjunction with the attorney work product privilege, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

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 city may not withhold the submitted information under rule 192.5 of the Texas Rules of Civil Procedure. We note, however, that sections 552.101 and 552.130 of the Government Code are "other law" for the purposes of 552.022(a)(1).² Therefore, we will consider whether these exceptions are applicable to the submitted information.

Section 552.101 excepts from public 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 is made confidential by statute. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* § 411:083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* 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 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. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. A portion of the submitted information constitutes CHRI generated by TCIC and NCIC. The city must withhold this information, which we have marked, pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.³

Section 552.130 excepts from disclosure 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." Gov't Code § 552.130(a)(1), (2). However, because this exception protects personal privacy, the requestor has a right of access to her own Texas motor vehicle record information pursuant to section 552.023 of the Government Code.⁴ *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

² The Office of the Attorney General will raise sections 552.101 and 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³ We note that an individual can obtain her own CHRI from DPS. Gov't Code § 411.083(b)(3).

⁴ Section 552.023(a) provides that "[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." Gov't Code § 552.023(a).

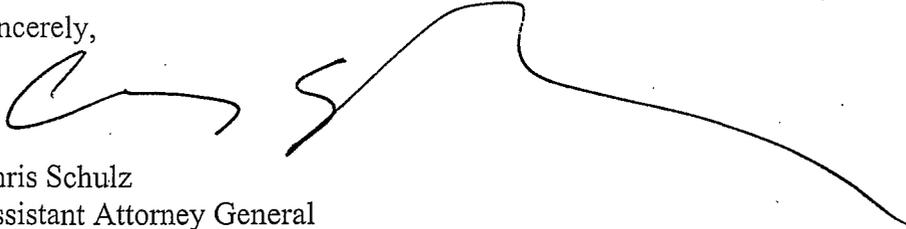
The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must also withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.⁵

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.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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/eb

Ref: ID# 340321

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

⁵ We 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). Therefore, if the city receives another request for this same information from a different requestor, then the city should again seek a decision from this office.