



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 14, 2009

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

OR2009-10504

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# 350455.

The Victoria Police Department (the "department") received a request for a copy of a rejection or dismissal of the charges against the requestor's client in a specified case. You claim that the submitted information is excepted from disclosure under sections 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.

As noted above, the instant request for information is only for a copy of a rejection or dismissal of the charges against the requestor's client in a specified case. You have submitted a prosecution charge report and an incident report that do not show a rejection or dismissal of the case. Thus, this information, which we have marked, is not responsive to

¹You contend that the submitted prosecution charge reports are 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).

the instant request. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

We next note the responsive 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, for, or by a governmental body, except as provided by Section 552.108.” Gov’t Code § 552.022(a)(1). In this instance, the responsive prosecution charge report is a completed report made of, for, or by the department. Accordingly, the responsive 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 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 department may not withhold the responsive information under rule 192.5 of the Texas Rules of Civil Procedure. However, because sections 552.101 and 552.130 are other laws for you section 552.022(a)(1) purposes, we will consider your arguments under these exceptions.

Section 552.108(a)(1) of the Government Code 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* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and the provided documents show, that the responsive information relates to a pending criminal investigation and prosecution. We understand that although the charge against one individual was declined for prosecution, the submitted information is intertwined with the pending investigation and prosecution of another individual. Based on your representations and our review, we conclude that the release of the responsive information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. 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). Accordingly, we find that section 552.108(a)(1) is applicable to the responsive information.

As you acknowledge, 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*. The department must release basic information, including a detailed description

of the offense, even if this information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d 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 front page information, the department may withhold the responsive information under section 552.108(a)(1) of the Government Code.²

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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#350455

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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