



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 26, 2009

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

OR2009-15186

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# 359354.

The City of Victoria (the "city") received a request for a form showing that a named individual's case was dismissed. You state you have released certain information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

As noted above, the instant request for information is only for the form showing that the named individual's case was dismissed. You have submitted an incident report that does not show a dismissal of the case. Thus, this information, which we have marked, is not responsive to the instant request. The city need not release information that is not responsive in response to this request, and this ruling will not address that information.

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<sup>1</sup>You contend the submitted information 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. 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).

We note the information at issue 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 submitted prosecution charge report is a completed report made of, for, or by the city. Accordingly, this 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 the information at issue, which relates to a criminal case. Therefore, the city may not withhold the submitted charge report under rule 192.5 of the Texas Rules of Civil Procedure. However, we note that portions of the submitted charge report are subject to sections 552.101 and 552.130 of the Government Code.<sup>2</sup> Since these exceptions are other law for the purposes of 552.022(a)(1), we will consider these exceptions.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 also encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). 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. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("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. *See 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.* § 411.090-1407. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked information in the submitted charge report that consists of CHRI that is confidential under section 411.083. Accordingly, the city must withhold this information pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

We note that the submitted charge report contains Texas motor vehicle record information subject to section 552.130 of the Government Code. This section excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130(a)(1), (2). Thus, the city must generally withhold the information we have marked that relates to a Texas motor vehicle license, title, or registration pursuant to section 552.130 of the Government Code. We note, however, that the submitted information indicates that the requestor is the common-law spouse of the individual to whom the marked motor vehicle information pertains. If the requestor is the authorized representative of the individual concerned, then pursuant to section 552.023 of the Government Code, the requestor has a right of access to the information we have marked under section 552.130 and it must be released to her. *See Gov't Code* § 552.023 (b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If the requestor is not this individual's authorized representative, then the city must withhold the 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 withhold the information we have marked under section 552.130 of the Government Code, unless the requestor is the authorized representative of the individual concerned. The remaining information must be released.<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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>3</sup>We note the remaining information contains a social security number. 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. However, to the extent the requestor is the authorized representative of the individual to whom this information pertains, the city may not withhold this information from this requestor. *See Gov't Code* § 552.023.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Pam Wissemann".

Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/dls

Ref: ID# 359354

Enc. Submitted documents

c: Requestor  
(w/o enclosures)