



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2012

Mr. Jesse Blakley, Jr.
Assistant District Attorney
Brazoria County Criminal District Attorney's Office
County Courthouse
111 East Locust, Suite 408A
Angleton, Texas 77515

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2012-09195

Dear Mr. Blakley:

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# 456244.

The Brazoria County District Attorney's Office (the "district attorney's office") received a request for records related to a specified case number. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in part:

¹Although you do not explicitly raise section 552.111 of the Government Code in your brief, based on your arguments we understand you to assert the attorney work product privilege under section 552.111 of the Government Code.

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) 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). The submitted information consists of a completed investigation and prosecution. The district attorney's office may only withhold a completed investigation if it is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Although you raise sections 552.103 and 552.111 as exceptions to disclosure, these exceptions are discretionary and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.111), 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, sections 552.103 and 552.111 are not confidentiality provisions for purposes of section 552.022(a)(1) of the Government Code. Accordingly, the district attorney's office may not withhold the submitted information under sections 552.103 and 552.111 of the Government Code. We note the attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure and the Texas Supreme Court has held the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the submitted information relates to a criminal case, 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, and the information may not be withheld on that basis. However, portions of the submitted information are subject to sections 552.101 and 552.130 of the Government Code, which make information confidential under the Act.² Therefore, we will consider the applicability of these sections to the submitted information.

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. Section 552.101 of the Government Code encompasses section 560.003 of the Government Code, which provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.*

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§ 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). The submitted information contains a fingerprint. There is no indication the requestor has a right of access to the fingerprint under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). Therefore, the district attorney’s office must withhold the fingerprint we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.130 of the Government Code provides that information related to a motor vehicle operator’s or driver’s license issued by a Texas agency, or an agency of another state or country, is excepted from public release. *Id.* § 552.130(a)(1). The submitted information contains driver’s license numbers that are subject to section 552.130. We note section 552.130 protects personal privacy. We further note the requestor may be the attorney and authorized representative of one of the individuals whose driver’s licenses are at issue. If the requestor is the individual’s authorized representative, he has a right of access to his client’s driver’s license number. *See id.* § 552.023 (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). In this instance, it is not clear whether the requestor is the individual’s attorney and we must rule conditionally. Therefore, if the requestor has a right of access to his client’s driver’s license number, it may not be withheld from him under section 552.130 of the Government Code. However, if the requestor is not the individual’s attorney and does not have a right of access to this information, the district attorney’s office must withhold this information under section 552.130 of the Government Code. In either event, the district attorney’s office must withhold the remaining driver’s license numbers we have marked under section 552.130 of the Government Code.

In summary, the district attorney’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The district attorney’s office must generally withhold the information we have marked under section 552.130 of the Government Code. However, to the extent the requestor has a right of access to his client’s driver’s license number, the district attorney’s office must release his client’s driver’s license number to the requestor. The remaining information must be released.

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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/bs

Ref: ID# 456244

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Cause No. D-1-GN-12-002143

**JERI YENNE, CRIMINAL DISTRICT
ATTORNEY FOR BRAZORIA COUNTY,
TEXAS**

Plaintiff,

v.

**GREG ABBOTT,
ATTORNEY GENERAL OF TEXAS,**

Defendant,

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

250th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

Filed in the District Court
of Travis County, Texas

TJ SEP 10 2012

At J. B. P. M.
Amalia Rodriguez-Mendoza, Clerk

AGREED ORDER OF DISMISSAL

On this date, Plaintiff Jeri Yenne, Criminal District Attorney for Brazoria County, Texas and Defendant Greg Abbott, Attorney General of Texas, moved that this cause be dismissed. The parties announced to the Court that this matter should be dismissed pursuant to Tex. Gov't Code Ann. § 552.301(g) and § 552.327. This cause is an action under the Public Information Act, Tex. Gov't Code Ann. ch. 552. Plaintiff timely filed this lawsuit challenging the Attorney General's open records ruling, OR2012-09195. The requestor, Steve A. Kamel, has withdrawn his request for the information at issue. Accordingly, the parties request that the Court enter this

Agreed Order of Dismissal.

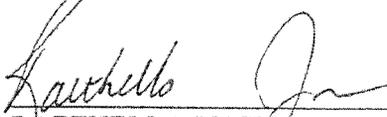
The Court is of the opinion that the entry of an agreed order of dismissal is appropriate.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that Plaintiff's cause of action against Defendant is dismissed in all respects.

SIGNED this the 10th day of September, 2012.

San J. Strauss
PRESIDING JUDGE

AGREED:



RAETHELLA JONES
State Bar No. 75007981
Assistant District Attorney
Brazoria County
111 East Locust, Rm. 408A
Angleton, Texas 77515
Telephone: (281) 756-1233
Facsimile: (979) 864-1712
ATTORNEY FOR PLAINTIFF



KIMBERLY L. FUCHS
State Bar No. 24044140
Chief, Open Records Litigation
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548
Telephone: (512) 475-4195
Facsimile: (512) 320-0167
ATTORNEY FOR DEFENDANT