



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2014

Mr. Michael L. Garza
Assistant District Attorney
Hidalgo County Criminal District Attorney's Office
100 North Closner, Room 303
Edinburg, Texas 78539

OR2014-18800

Dear Mr. Garza:

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# 540347 (ORR# 2014-0098-DA).

The Hidalgo County District Attorney's Office (the "district attorney's office") received a request for the entire file for the arrest, prosecution, and conviction of a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information relates to a completed investigation. Section 552.022(a)(1) of the Government Code provides for the required disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). You raise section 552.111 of the Government Code along with the attorney work-product privilege. However, section 552.111 is a discretionary exception that protects a governmental body's interests and does not make information confidential under the Act. Open Records Decision Nos. 677 at 8 (2002) (attorney work-product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, the district attorney's office may not withhold the requested information under section 552.111 of the Government Code. We note the attorney work-product privilege is found at rule 192.5 of the Texas Rules of Civil

of Civil Procedure, which has been held to be other law within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). However, those rules are applicable only to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. Thus, because the submitted information pertains to a criminal case, rule 192.5 is not applicable to the submitted information. Therefore, the district attorney’s office may not withhold the submitted information on the basis of the attorney work product privilege in Texas Rule of Civil Procedure 192.5. However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your argument under section 552.101 for 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. This section encompasses information protected by other statutes, such as article 42.12 of the Code of Criminal Procedure. Section 9 of article 42.12 is applicable to pre-sentence investigation and post-sentence reports and provides, in part:

(j) The judge by order may direct that any information and records that are not privileged and that are relevant to a report required by Subsection (a) or Subsection (k) of this section be released to an officer conducting a presentence investigation under Subsection (l) of this section or a postsentence report under Subsection (k) of this section. The judge may also issue a subpoena to obtain that information. A report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only:

- (1) to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section;
- (2) pursuant to Section 614.017, Health and Safety Code; or
- (3) as directed by the judge for the effective supervision of the defendant.

Crim. Proc. Code art. 42.12, § 9(j). The submitted documents include a pre-sentence investigation report. You state none of the release provisions in section 9 appear to be applicable. Accordingly, the district attorney’s office must withhold the submitted pre-sentence investigation report under section 552.101 of the Government Code in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure. As you raise no other exceptions to disclosure, 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 540347

Enc. Submitted documents

c: Requestor
(w/o enclosures)