



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2015

Ms. Myrna S. Reingold
Legal Department
County of Galveston
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2015-04386

Dear Ms. Reingold:

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# 555551.

The Galveston County Criminal District Attorney's Office (the "district attorney's office") received two requests from the same requestor for (1) all documents pertaining to case numbers MD-0341971 and MD-0341972 and (2) the offense reports pertaining to the same case numbers. You state the district attorney's office has provided some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code, and privileged under Texas Rule of Evidence 503, Texas Rule of Civil Procedure 192.5, and article 39.14 of the Code of Criminal Procedure. We have considered your arguments and reviewed the submitted information.

Initially, you seek to withhold the submitted information pursuant to article 39.14 of the Code of Criminal Procedure. We note, however, article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. *See* Crim. Proc. Code art. 39.14. Article 39.14 does not expressly make information confidential for purposes of the Act. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality under section 552.101 must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to

public); *see also* Open Records Decision No. 575 at 2 (1990) (explicitly stating discovery privileges are not covered by statutory predecessor to section 552.101). Therefore, we conclude the district attorney's office may not withhold any of the submitted information under article 39.14 of the Code of Criminal Procedure.

Next, we must address the district attorney's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). You state the district attorney's office received the request for information on December 8, 2014. Accordingly, the district attorney's office's ten-business-day deadline was December 22, 2014. Although you timely submitted your request for a decision to this office, you initially raised only sections 552.101, 552.108, 552.130, and 552.147 of the Government Code as exceptions to disclosure of the submitted information. Because you stated "section 552.101" only, you did not indicate you are asserting Texas Rule of Evidence 503 or Texas Rule of Civil Procedure 192.5 until December 31, 2014, when you asserted these rules in conjunction with section 552.101 of the Government Code. 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). Consequently, we find the district attorney's office failed to comply with the requirements of section 552.301 of the Government Code with respect to your claims under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the provisions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although the district attorney's office seeks to withhold some of the submitted information under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, these rules are discretionary privileges that protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 677 at 10 (attorney work-product privilege under rule 192.5 is not compelling reason to withhold information under section 552.302), 676 at 12 (claim of attorney-client privilege under rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, in failing to comply with section 552.301 with respect to Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, the district

attorney's office has waived its claims under these rules. Consequently, the district attorney's office may not withhold any of the submitted information on the basis of Texas Rule of Evidence 503 or Texas Rule of Civil Procedure 192.5. However, we will consider your timely-raised arguments under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the submitted information pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Thus, with the exception of basic information, which you state you have released, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.¹

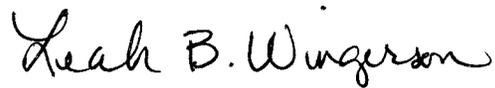
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 that reads "Leah B. Wingerson". The signature is written in a cursive style with a large initial "L".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 555551

Enc. Submitted documents

c: Requestor
(w/o enclosures)