



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2012

Mr. Jon Thatcher
Rockwall County District Attorney's Office
1111 East Yellowjacket Lane, Suite 201
Rockwall, Texas 75087

OR2012-12865

Dear Mr. Thatcher:

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# 462348.

The Rockwall County District Attorney's Office (the "district attorney's office") received two requests for information related to a specified investigation. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure.¹ We have considered your submitted arguments and reviewed the submitted information. We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the one of the requestors asks the district attorney's office to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within

¹Although you raise section 552.101 of the Government Code in conjunction with Rule 192.5 of the Texas Rules of Civil Procedure, 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).

its possession or control. Open Records Decision No. 561 at 8-9 (1990), 555 at 102. We assume the district attorney's office has made a good-faith effort to do so.

Next, you acknowledge the information at issue consists of a completed investigation by the district attorney's office that is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act. Gov't Code § 552.022(a)(1). We note you raise section 552.108 for portions of the submitted information. The Texas Supreme Court has held "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." See TEX. R. CIV. P. 2. Thus, because the information you have marked under rule 192.5 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 and this information may not be withheld on that basis. However, we will consider your argument under section 552.108 for the information at issue.

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 information you have marked concerns a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we find the district attorney's office may withhold the information you have marked under section 552.108(a)(2) of the Government Code. As you raise no further exceptions against 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.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 black ink, appearing to read 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/akg

Ref: ID# 462348

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

c: M
(w/o enclosures)