



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 30, 2016

Mr. Vance Hinds
Assistant County & District Attorney
County of Ellis
109 South Jackson
Waxahachie, Texas 75165

OR2016-19606

Dear Mr. Hinds:

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# 624523.

The Ellis County District Attorney's Office (the "district attorney's office") received a request for a specified document and the entire case file pertaining to a named individual. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, 552.136, and 552.147 of the Government Code and protected under rule 12.5 of the Rules of Judicial Administration. We have considered the district attorney's office's arguments and reviewed the submitted information.

The district attorney's office argues the submitted information is exempt from disclosure under rule 12.5(f) of the Rules of Judicial Administration. Rule 12 applies to the judiciary only and governs the public disclosure of judicial records, which are not subject to the Act. TEX. R. JUD. ADMIN. 12; Gov't Code §§ 552.003(a)(B), .0035(a). In this instance, the submitted information consists of information held by the district attorney's office. Because this information is maintained by the district attorney's office, Rule 12 does not apply. Therefore, the submitted information is subject to the Act, and it may only be withheld if it is excepted from disclosure under an exception in the Act.

Next, we note the submitted information includes information subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure

of “information that is also contained in a public court record” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(17). Although the district attorney’s office raises sections 552.108 and 552.111 of the Government Code, these are discretionary exceptions and do not make information confidential under the Act. *See* Open Records Decision Nos. 677 at 8-10 (2002) (governmental body may waive attorney work product privilege under section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, sections 552.108 and 552.111 do not make information confidential for the purposes of section 552.022. Therefore, the information subject to section 552.022, which we have marked, may not be withheld under section 552.108 or 552.111 of the Government Code. The attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. *See* TEX. R. CIV. P. 192.5. The Texas Supreme Court has held “[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, 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 requested documents relate 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 the district attorney’s office may not withhold the information at issue on that basis. We also note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54.57 (Tex. 1992) (law cannot recall information once in public domain). However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to the information subject to section 552.022. Further, we will address the arguments of the district attorney’s office against disclosure for the remaining information not subject to section 552.022 of the Government Code.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney’s office states the remaining information relates to a pending prosecution and release of the information would interfere with that prosecution. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to

the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front-page offense and arrest information, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. Accordingly, the district attorney's office must withhold the motor vehicle record information we have marked in the information subject to section 552.022 under section 552.130 of the Government Code.

In summary, the district attorney's office must release the information we have marked under section 552.022 of the Government Code. In releasing the information subject to section 552.022, the district attorney's office must withhold the information we have marked under section 552.130 of the Government Code. With the exception of basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

¹As our ruling is dispositive, we need not address the district attorney's office's remaining arguments against disclosure of this information.

Ref: ID# 624523

Enc. Submitted documents

c: Requestor
(w/o enclosures)