



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 23, 2020

Ms. Elizabeth Stevens  
Assistant General Counsel  
Harris County District Attorney  
500 Jefferson Street  
Houston, Texas 77002

OR2020-24025

Dear Ms. Stevens:

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# 849783 (ORR# 2020.08-0005).

The Harris County District Attorney's Office (the "district attorney's office") received a request for a specified case file. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>1</sup>

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

(a) [T]he 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 relates to a completed investigation and is subject to section 552.022(a)(1). The district attorney's office must

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

release the information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* The district attorney's office seeks to withhold the submitted information under section 552.108 and the attorney work product privilege of section 552.111 and seeks to withhold portions of the submitted information under sections 552.101 and 552.130. We note section 552.111 is a discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally).* Therefore, the district attorney's office may not withhold the information at issue under section 552.111 of the Government Code. 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). We note the attorney work-product privilege is found at rule 192.5 of the Texas Rules of Civil Procedure. The Texas Rules of Civil Procedure 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 information at issue and the district attorney's office may not withhold any portion of the submitted information on the basis of the attorney work-product privilege in Texas Rule of Civil Procedure 192.5. However, as information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider the district attorney's office's argument under section 552.108 for the information at issue. Further, because sections 552.101 and 552.130 of the Government Code make information confidential information, we address their applicability.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code § 552.108(a)(2).* A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The district attorney's office states the submitted information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 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 Publishing 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 also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).* Thus, with the exception of basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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<sup>2</sup> As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Amy Shipp  
Assistant Attorney General  
Open Records Division

ALS/gw

Ref: ID# 849783

c: Requestor