



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 24, 2017

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

Ms. Lisa Ruiz  
Paralegal  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2017-16545

Dear Ms. Ruiz:

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# 667555 (ORR# C003560).

The City of Dallas (the "city") received a request for the completed report pertaining to a specified incident. The city states it is releasing some of the requested information. The city claims the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code and is privileged under rule 192.5 of the Texas Rules of Civil Procedure. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) 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 is part of a completed investigation that is subject to section 552.022(a)(1). The city must 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 city seeks to withhold the information subject to section 552.022(a)(1) under section 552.103 and the work product privilege of section 552.111 of the Government Code. However, sections 552.103 and 552.111 are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* 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), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the information subject to section 552.022 may not be withheld under section 552.103 or section 552.111 of the Government Code. However, 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 will therefore consider the city's assertion of the attorney work product privilege under rule 192.5 of the Texas Rules of Civil Procedure.

Texas Rule of Civil Procedure 192.5 encompasses the attorney work product privilege. For purposes of section 552.022 of the Government Code, information is confidential under rule 192.5 only to the extent the information implicates the core work product aspect of the work product privilege. *See* ORD 677 at 9-10. Rule 192.5 defines core work product as the work product of an attorney or an attorney's representative, developed in anticipation of litigation or for trial, that contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney's representative. *See* TEX. R. CIV. P. 192.5(a), (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under rule 192.5, a governmental body must demonstrate the material was (1) created for trial or in anticipation of litigation and (2) consists of the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *Id.*

The first prong of the work product test, which requires a governmental body to show the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate (1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation there was a substantial chance litigation would ensue, and (2) the party resisting discovery believed in good faith there was a substantial chance litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See Nat'l Tank v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A “substantial chance” of litigation does not mean a statistical probability, but rather “that litigation is more than merely an abstract possibility or unwarranted fear.” *Id.* at 204. The second part of the work product test requires the governmental body to show the materials at issue contain the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *See* TEX. R. CIV. P. 192.5(b)(1). A document

containing core work product information that meets both parts of the work product test is confidential under rule 192.5, provided the information does not fall within the scope of the exceptions to the privilege enumerated in rule 192.5(c). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding).

The city claims the submitted information consists of work product that is protected by rule 192.5 of the Texas Rules of Civil Procedure. The city states the information was created in anticipation of litigation. Although the city informs us the information at issue was prepared “by the city’s employees and agents[,]” the city has failed to demonstrate the information was created by or at the direction of an attorney for the city or the attorney’s representative. We therefore conclude the city may not withhold the submitted information under Texas Rule of Civil Procedure 192.5. The city must therefore release the submitted information.

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/bw

Ref: ID# 667555

c: Requestor

AUG 28 2018 JC

At 2:11 P.M.  
Velva L. Price, District Clerk

NO. D-1-GV-11-001419

CITY OF DALLAS, Plaintiff,	§	IN THE DISTRICT COURT
	§	
v.	§	OF TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, Defendant.	§	53rd JUDICIAL DISTRICT

### FINAL SUMMARY JUDGMENT

On July 31, 2018, a hearing was held on Plaintiff's and Defendant's cross-motions for summary judgment. Plaintiff, the City of Dallas, and Defendant, Ken Paxton, Attorney General of Texas, appeared by counsel of record and announced ready. This case is the City's appeal from the Attorney General's letter rulings numbers OR2014-03670, OR2014-04006, OR2014-07349, OR2016-18343, OR2017-11720, OR2017-16545, and OR2017-21550 on open records requests the City received from various requestors. The Court, having considered the pleadings, Plaintiff's and Defendant's motions for summary judgment, the summary-judgment record (including Exhibit A, the Information at Issue, which was filed under seal at the hearing and submitted to the Court for *in camera* inspection), the arguments of counsel, and the applicable legal authorities, is of the opinion that Plaintiff's motion should be granted and Defendant's motion should be denied.

It is accordingly ORDERED, ADJUDGED, and DECREED that Plaintiff's Motion for Summary Judgment is GRANTED and that Defendant's Motion for Summary Judgment is DENIED.

It is further ORDERED, ADJUDGED, and DECREED that the information represented by Exhibit A is excepted from required disclosure under Texas Government Code chapter 552 and that letter rulings numbers OR2014-03670, OR2014-04006, OR2014-07349, OR2016-18343, OR2017-11720, OR2017-16545, and OR2017-21550 are reversed insofar as they conclude otherwise.

It is further ORDERED, ADJUDGED, and DECREED that Plaintiff shall recover its court costs.

The Court denies all relief not granted in this judgment. This judgment disposes of all claims between all parties and is final and appealable.

SIGNED on this 28<sup>th</sup> day of ~~July~~ <sup>August</sup> 2018.

  
\_\_\_\_\_  
JUDGE PRESIDING  
AMY CLARK MEACHUM