



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2019

Ms. Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2019-12049

Dear Ms. Downey:

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# 762913 (PIR No. R000323).

The Office of the Attorney General (the "OAG") received a request for information to expenses paid by the OAG regarding a specified case. The OAG states it will release most of the requested information. The OAG claims some of the submitted information is excepted from disclosure under rule 192.3 of the Texas Rules of Civil Procedure. We have considered the OAG's argument and reviewed the submitted representative sample of information.¹ We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, the OAG acknowledges, and we agree, the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in part:

¹We 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 that those records contain substantially different types of information than that submitted to this office.

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Id. § 552.022(a)(3). The OAG must release the information subject to section 552.022(a)(3) unless it is made confidential under the Act or other law. The Texas Supreme Court has held the Texas Rules of Civil Procedure are “other law” for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider the OAG’s argument under rule 192.3 of the Texas Rules of Civil Procedure for the information at issue.

Rule 192.3 of the Texas Rules of Civil Procedure provides the consulting expert privilege. A party to litigation is not required to disclose the identity, mental impressions, and opinions of consulting experts whose mental impressions or opinions have not been reviewed by a testifying expert. *See* TEX. R. CIV. P. 192.3(e). A “consulting expert” is defined as “an expert who has been consulted, retained, or specially employed by a party in anticipation of litigation or in preparation for trial, but who is not a testifying expert.” *Id.* 192.7.

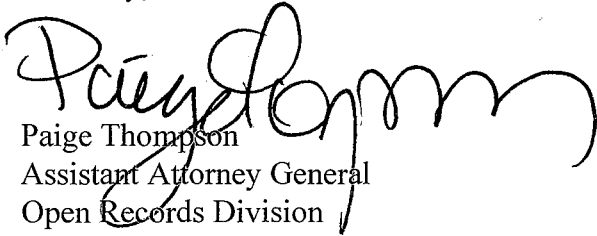
The OAG informs us that some of the submitted information reveals the identities of consulting-only experts hired to assist the OAG in the case at issue. The OAG states “[the experts at issue] did not testify, their identities were not disclosed in any pleadings or discovery, and their work was not reviewed by a testifying expert.” Based on these representations and our review, we find that the information at issue identifies the OAG’s consulting experts. We therefore find the OAG may withhold the identifying information, which the OAG marked, pursuant to rule 192.3(e) of the Texas Rules of Civil Procedure. The OAG must release the remaining 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, 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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 762913

Enc. Submitted documents

c: Requestor
(w/o enclosures)