



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 7, 2020

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

OR2020-13066

Dear Ms. Harden:

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# 827015 (PIR# R003665).

The Office of the Attorney General (the "OAG") received a request for information pertaining to consultants for the OAG's Antitrust Division from a specified time period. The OAG states it will release some of the requested information with redactions allowed by law. Additionally, the OAG states it will rely on Open Records Letter No. 2020-05041 (2020) and withhold or release some of the requested information in accordance with that ruling.¹ The OAG claims the submitted information is privileged pursuant rule 192.3 of the Texas Rules of Civil Procedure. We have considered the submitted argument and reviewed the submitted information.

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:

¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

(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[.]

Gov't Code § 552.022(a)(3). The OAG must release 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 identity of a consulting-only expert hired to assist the OAG in a certain case. The OAG states “[the expert at issue] has not testified, their identity has not been disclosed in any pleadings or discovery, and their work has not been reviewed by a testifying expert.” Based on these representations and our review, we find that the information at issue identifies the OAG's consulting expert. 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 <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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/eb

Ref: ID# 827015

Enc. Submitted documents

c: Requestor
(w/o enclosures)