



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 25, 2020

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

OR2020-21416

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# 841819 (PIR# R004604).

The Office of the Attorney General (the "OAG") received a request for specified contracts pertaining to consultants and a specified investigation from a specified time period. The OAG claims some of 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:

(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/be

Ref: ID# 841819

Enc. Submitted documents

c: Requestor  
(w/o enclosures)