



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2010

Mr. Warren M. S. Ernst  
Chief of the General Counsel Division  
City of Dallas  
1500 Marilla Street, Room 7BN  
Dallas, Texas 75201

OR2010-07686

Dear Mr. Ernst:

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# 380737.

The City of Dallas (the "city") received a request for five categories of information pertaining to the appraisal, negotiation, or condemnation of two specified properties. You state the city will release information responsive to three of the requested categories of information. You also state the city does not have any information responsive to one of the categories.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code and privileged pursuant to rules 192.3 and 192.5 of the Texas Rules

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

of Civil Procedure.<sup>2</sup> We have considered your claims and reviewed the submitted information.

Initially, we note, and you acknowledge, the submitted appraisal report is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

(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 under this chapter unless they are expressly confidential under 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 consists of a completed appraisal report that is subject to section 552.022(a)(1). Therefore, the city may only withhold this information if it is confidential under "other law." Section 552.111 of the Government Code is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 676 at 10-11 (2002), 665 at 2 n.5 (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 may be waived). Thus, the submitted information may not be withheld under section 552.111.

You also contend, however, that the submitted information is protected by rules 192.5 and 192.3(e) of the Texas Rules of Civil Procedure. The Texas Supreme Court has held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will consider your arguments under these rules.

The consulting expert privilege is found in rule 192.3(e) of the Texas Rules of Civil Procedure. 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

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<sup>2</sup>Although you also raise section 552.022 of the Government Code as an exception to disclosure, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022.

anticipation of litigation or in preparation for trial, but who is not a testifying expert.”  
TEX. R. CIV. P. 192.7.

You explain the submitted appraisal report was prepared in connection with a pending condemnation proceeding filed by the city. You state the city obtained expert advice from a licensed appraisal company that prepared the report at issue. You state the city does not anticipate calling the appraisers as trial witnesses in the condemnation proceeding and the submitted appraisal report has not been reviewed by any testifying expert in preparation for litigation. Based on your representations, we conclude that the city may withhold the submitted appraisal report under rule 192.3(e) of the Texas Rules of Civil Procedure.<sup>3</sup>

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 380737

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As we are able to reach this conclusion, we do not address your remaining claim for against disclosure of this information.