



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 28, 2011

Ms. Jordan Hale  
Assistant Attorney General  
Assistant Public Information Coordinator  
General Counsel Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2011-04210

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 413136 (PIR No. 11-29811).

The Office of the Attorney General (the "OAG") received a request for the invoices, bills, and budget documents for outside legal counsel and experts for five lawsuits against the United States Environmental Protection Agency (the "EPA"). The OAG claims the information is privileged under rule 192.3 of the Texas Rules of Civil Procedure. We have considered the OAG's claimed privilege and reviewed the submitted information.

The OAG acknowledges the invoices and bills are subject to section 552.022(a) of the Government Code, which enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 unless they are expressly confidential under other law. *See* Gov't Code § 552.022(a). These documents must therefore be released under section 552.022(a) unless the information is expressly made confidential under other law. The Texas Supreme Court held the Texas Rules of Civil Procedure 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 determine whether the information is confidential under rule 192.3 of the Texas Rules of Civil Procedure.

The consulting expert privilege is found in rule 192.3(e), which provides a party to litigation is not required to disclose the identity, mental impressions, and opinions of a consulting expert whose mental impressions or opinions have not been reviewed by a testifying expert. 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(d).

The OAG informs us it contracted with consulting experts for services in anticipation of litigation and in preparation for trial against the EPA. Furthermore, the OAG states the consulting experts will not testify at trial, and testifying experts have not reviewed the consulting experts' work. Although the OAG contends all of Exhibit B reveals the consulting experts' identities and mental impressions or opinions, we disagree with this assertion. We have marked the consulting experts' identities and mental impressions or opinions excepted from disclosure by rule 192.3. The OAG must release the remainder.

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 413136

Enc: Marked documents

c: Requestor  
(w/o enclosures)