



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2011

**The ruling you have requested
has been amended as a result of
litigation and has been attached
to this document.**

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701

OR2011-07015

Dear Ms. Alexander:

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# 417908.

The Texas Department of Transportation (the "department") received a request for all appraisals on real property and real property improvements in Bexar County received by the department since January 1, 2008. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code and privileged under rule 192.3 of the Texas Rules of Civil Procedure. We have considered your arguments and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted appraisal reports are subject to section 552.022 of the Government Code, which provides, in pertinent 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) [T]he 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[.]

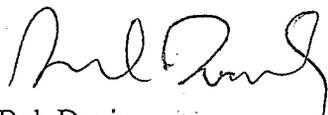
Gov't Code § 552.022(a)(1). The submitted appraisal reports were completed for the department and thus fall within the purview of section 552.022(a)(1). The department may only withhold information subject to section 552.022(a)(1) if it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under "other law." *See id.* Although you claim these reports are excepted under section 552.111 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 does not constitute "other law" that makes information expressly confidential for purposes of section 552.022. Consequently, the department may not withhold the submitted reports under section 552.111 of the Government Code. You also assert, however, that this information is protected by Texas Rule of Civil Procedure 192.3. The Texas Supreme Court has held the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider your argument under rule 192.3 for the information at issue.

Texas Rule of Civil Procedure 192.3(e) provides "[t]he identity, mental impressions, and opinions of a consulting expert whose mental impressions and opinions have not been reviewed by a testifying expert are not discoverable." TEX. R. CIV. P. 192.3. 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." TEX. R. CIV. P. 192.7(d). You explain the department is in the process of acquiring land and has obtained expert advice from licensed appraisers in preparing appraisal reports for possible eminent domain litigation. You represent the department does not anticipate at this time calling those appraisers as witnesses in the litigation. You also state the submitted reports, which consist of the appraisers' mental impressions and opinions, have not been reviewed by any testifying expert in preparation for litigation. Based on your representations and our review, we conclude the department may withhold the appraisal reports at issue under Texas Rule of Civil Procedure 192.3(e).

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, 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

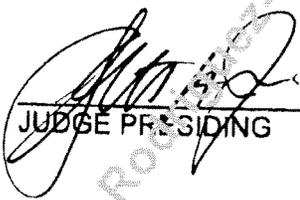
Ref: ID# 417908

Enc. Submitted documents

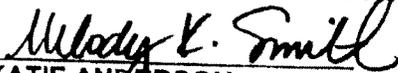
c: Requestor
(w/o enclosures)

It is THEREFORE, ORDERED, ADJUDGED and DECREED that this cause is hereby dismissed in all respects. Court costs are taxed to the party incurring same. All other requested relief not expressly granted herein is denied.

Signed this 28th day of January, 2014.

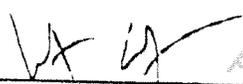

 JUDGE PRESIDING

APPROVED AND SUBMITTED BY:


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