ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2011

Mr. Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2011-08933

Dear Mr. Laughlin:

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# 421317.

The City of Farmer's Branch (the "city"), which you represent, received a request for the following four categories of information: (1) legal bills received by the city over a specified time period; (2) bills received by the city from Androvett Legal Consulting and Media over a specified time period; (3) a named individual's employment contract; and (4) city contracts, agreements, and correspondence with eight specified businesses that were all referenced in a specified postcard sent to city residents. You state the city has released most of the requested information. You claim that a portion of the submitted information is privileged pursuant to rule 192.5 of the Texas Rules of Civil Procedure. We have considered your claim and reviewed the submitted information.

Initially, you state the city requested clarification of the fourth category of requested information. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so request may be properly narrowed). You state the city has not received clarification of the portion of the request at issue. Thus, for the portion of the requested information for which you have not received clarification, we find the city is not required to release information in response to that portion of the request. However, if the requestor clarifies that portion of the request for information, the city must seek a ruling from this office before withholding any responsive information from the requestor. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010).

We note, and you acknowledge, the submitted information is subject to section 552.022 of the Government Code. This section provides, in pertinent part:

> (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:
>
> . . .
>
> (16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(16). In this instance, the submitted information consists of entries in attorney fee bills that are subject to section 552.022(a)(16). Therefore, this information must be released under section 552.022 unless it is confidential under "other law." You raise rule 192.5 of the Texas Rules of Civil Procedure for a portion of the submitted information. The Texas Supreme Court has held the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your assertions of the attorney work product privilege under rule 192.5 of the Texas Rules of Civil Procedure.

Texas Rule of Civil Procedure 192.5 encompasses the attorney work product privilege. For purposes of section 552.022 of the Government Code, information in an attorney fee bill is confidential under rule 192.5 only to the extent that the information implicates the core work product aspect of the work product privilege. *See* Open Records Decision No. 677 at 9-10 (2002). Rule 192.5 defines core work product as the work product of an attorney or an attorney's representative, developed in anticipation of litigation or for trial, that contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney's representative. *See* TEX. R. CIV. P. 192.5(a), (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under rule 192.5, a governmental body must demonstrate that the material was (1) created for trial or in anticipation of litigation and (2) consists of the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *Id.*

The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that (1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and (2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See Nat'l Tank v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204. The second part of the work product test requires the governmental body to show that the materials at issue contain the mental

impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *See* TEX. R. CIV. P. 192.5(b)(1). A document containing core work product information that meets both parts of the work product test is confidential under rule 192.5, provided the information does not fall within the scope of the exceptions to the privilege enumerated in rule 192.5(c). *See Pittsburgh Corning Corp.*, 861 S.W.2d at 427.

You contend the information you marked consists of attorney core work product that is protected by rule 192.5 of the Texas Rules of Civil Procedure. You state the information you have marked is related to pending litigation involving the city, and was prepared or developed to prepare the city for trial. Upon review, we find the city may withhold the information you have marked pursuant to rule 192.5. The city 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 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# 421317

Enc. Submitted documents

c: Requestor
(w/o enclosures)