



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2013

Mr. Gary B. Lawson
Counsel for the Dallas Police & Fire Pension System
Strasburger & Price
901 Main Street, Suite 4400
Dallas, Texas 75202-3794

OR2013-12926

Dear Mr. Lawson:

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# 494402.

The Dallas Police and Fire Pension System (the "system"), which you represent, received a request for any document containing a detailed breakdown of the "Actuarial Services" portion of the non-investment management expenses for the year 2012. We understand the system will withhold some of the submitted information pursuant to section 552.0038(c) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.103 and 552.11 of the Government Code, and privileged under rule 192.3 of the Texas Rules of Civil Procedure.² We have considered your arguments and reviewed the submitted information.

¹Section 552.0038(c) of the Government Code provides that a governmental entity that maintains records of a participant in a retirement system's retirement program in cooperation with or on behalf of a retirement system is not required to accept or comply with a request for such information or to seek an opinion from the attorney general because the records are exempt from the provisions of the Act. *See* Gov't Code § 552.0038(c).

²Although you raise section 552.101 of the Government Code in conjunction with Texas Rules of Civil Procedure 192.3 and 192.5, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Additionally, we note you have not submitted any arguments explaining the applicability of section 552.107 of the Government Code, Texas Rule of Evidence 503, or Texas Rule of Civil Procedure 192.5 to the submitted information; therefore, we assume you have withdrawn these claims. *See* Gov't Code §§ 552.301, .302.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. This section provides, in pertinent 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(3). The submitted information consists of invoices related to the expenditure of funds by the system. This information is subject to subsection 552.022(a)(3) of the Government Code. You argue portions of this information are excepted from disclosure by sections 552.103 and 552.111 of the Government Code. However, these sections are discretionary exceptions to disclosure that protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). As such, sections 552.103 and 552.111 do not make information confidential under the Act. Therefore, the system may not withhold any of the submitted information under section 552.103 or section 552.111 of the Government Code. However, the Texas Supreme Court has held that 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). Accordingly, we will address your claim under rule 192.3 of the Texas Rules of Civil Procedure for the information you have marked. Additionally, we note portions of the submitted information are subject to section 552.136 of the Government Code.³ Because section 552.136 can make information confidential under the Act, we will address the applicability of this section to the information subject to section 552.022.

The consulting expert privilege is found in rule 192.3 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

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

You inform us the system contracted with experts for services in anticipation of litigation and the portions of the submitted information you have marked reveal the identities of these experts. You also state the experts have been retained solely for consultation and will not testify at trial. However, upon review, we find the information you have marked does not reveal the identities of any experts or contain the mental impressions or opinions of any consulting experts. Accordingly, you have failed to demonstrate the applicability of Texas Rule of Civil Procedure 192.3(e) to the information at issue, and, therefore, none of the submitted information may be withheld on that basis.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the system must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.⁴ The remaining information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

⁴Section 552.136(c) of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov’t Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

Mr. Gary B. Lawson - Page 4

Ref: ID# 494402

Enc. Submitted documents

c: Requestor
(w/o enclosures)