



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2011

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

OR2011-04529

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# 413549.

The City of Dallas (the "city") received requests for (1) all appraisals regarding a specified area of real property performed in 2009, 2010, and 2011 by or for the city, including those performed by Paramount Valuation Services, Inc. and (2) the appraisal report for a specified property. You state the city will provide some of the requested information to the first requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.105, 552.111 of the Government Code, and protected under Texas Rules of Civil Procedure 192.3 and 192.5. We have considered your arguments and reviewed the submitted representative sample of information.¹

Initially, you acknowledge, and we agree, the requested appraisals 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 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). You explain the requested information at issue consists of completed appraisal reports of real property that fall within the purview of section 552.022(a)(1). The city 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 the appraisal reports are excepted under sections 552.105 and 552.111 of the Government Code, these sections are discretionary exceptions to disclosure that protect 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), 564 (1990) (statutory predecessor to section 552.105 subject to waiver).* As such, sections 552.105 and 552.111 do not constitute other law that make information expressly confidential for the purposes of section 552.022. Consequently, the city may not withhold the appraisal reports under section 552.105 or section 552.111 of the Government Code. You also assert, however, the appraisal reports are protected by Texas Rules of Civil Procedure 192.3 and 192.5, and a portion of one of the reports is confidential under section 552.101 of the Government Code. 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). Furthermore, information subject to section 552.022(a)(1) may be withheld under section 552.101. Accordingly, we will consider your arguments under rules 192.3 and 192.5, as well as section 552.101, for the information at issue.

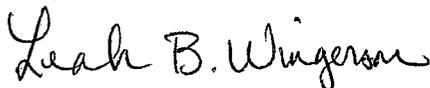
Texas Rule of Civil Procedure 192.3(e) provides "[t]he identity, mental impressions, and opinions of a consulting expert whose mental impressions and opinions have not been reviewed by a testifying expert are not discoverable." TEX. R. CIV. P. 192.3. A "consulting expert" is defined as "an expert who 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 city 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 assert the city does not anticipate at this time calling those appraisers as witnesses in the litigation. You also state the appraisal 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 city may withhold the appraisal reports at issue under Texas Rule of Civil Procedure 192.3(e).²

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 413549

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.