



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2014

Mr. Tony Resendez
Counsel for Harlandale Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2014-20458

Dear Mr. Resendez:

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# 542745.

The Harlandale Independent School District (the “district”), which you represent, received a request for a copy of a specified assessment and a copy of a specified services agreement, including any amendments. The submitted information indicates the district released a copy of the requested agreement to the requestor. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code and privileged under Texas Rule of Civil Procedure 192.3.¹ We have considered your arguments and reviewed the submitted information. We have also received and considered comments submitted by a representative of the requestor. *See* Gov’t Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]” unless

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Civil Procedure 192.3, 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).

it is excepted by section 552.108 of the Government Code or “made confidential under [the Act] or other law[.]” *Id.* § 552.022(a)(1). The submitted Facility Assessment is subject to section 552.022(a)(1) and must be released unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. You do not claim section 552.108. Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *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 No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the submitted information under section 552.103. However, the Texas Supreme Court has held the Texas Rules of Civil Procedure are “other law” that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will address your argument under Texas Rule of Civil Procedure 192.3. We also note portions of the submitted information are subject to section 552.130 of the Government Code, which makes information confidential under the Act; thus, we will also address the applicability of this exception to the submitted information.²

Texas Rule of Civil Procedure 192.3(e) provides that “[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(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.

You explain the submitted assessment was prepared for the district by an outside company in order to provide information to the district’s board of trustees (the “board”) regarding estimates of costs to retrofit, renovate, or replace two specified facilities, and to assist the board in making decisions regarding a possible bond election. Further, you explain the district is involved in pending litigation regarding installation of certain equipment at district facilities, including the two facilities that are the subject of the submitted assessment. You assert the submitted assessment is not discoverable under rule 192.3 and it has not been provided to, reviewed by, or prepared by or for a testifying expert in the pending litigation. However, you state the assessment was “not prepared or obtained for purposes of the litigation[.]” Upon review, we find you have failed to demonstrate the applicability of rule 192.3(e) to the submitted information and the district may not withhold it on that basis.

²The 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).

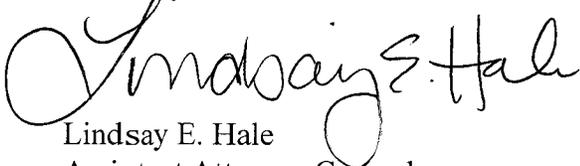
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We conclude the district must withhold the information we have indicated under section 552.130.

In summary, the district must withhold the information we have indicated under section 552.130 of the Government Code. The district 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.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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 542745

Enc. Submitted documents

c: Requestor
(w/o enclosures)