



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2016

Ms. Kristen Worman
General Counsel
Texas Appraiser Licensing & Certification Board
P.O. Box 12188
Austin, Texas 78711-2188

OR2016-07297

Dear Ms. Worman:

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# 604104 (TALBC ID #2016112.1_Allen).

The Texas Appraiser Licensing & Certification Board (the "board") received a request for information pertaining to a named appraiser and any complaints filed against him. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.111, and 552.137 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure. We have considered the submitted arguments and reviewed the submitted information.

Section 552.111 excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]" Gov't Code § 552.111. Section 552.111 encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as

- (1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5. A governmental body seeking to withhold information under this exception bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative. TEX. R. CIV. P. 192.5; ORD 677 at 6-8. In order for this office to conclude the information was made or developed in anticipation of litigation, we must be satisfied

a) 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 b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

Nat'l Tank Co. 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; ORD 677 at 7.

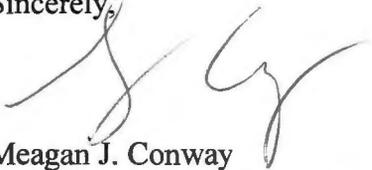
You claim the attorney work product privilege of section 552.111 of the Government Code for the submitted information. You explain this information pertains to an investigation into an open enforcement complaint where the board will determine whether a violation of Chapter 1103 of the Occupations Code or the board's rules has occurred. You state if the board determines a violation has occurred and the board cannot reach a settlement with the respondent in this case, the matter will be referred to the State Office of Administrative Hearings (the "SOAH") for a contested case proceeding under the Administrative Procedure Act. *See* Occ. Code §§ 1103.508, .518. Accordingly, you assert the board reasonably anticipates litigation as the enforcement action may be disputed before the SOAH. You also state the information was prepared by a legal assistant for the board and the board's attorneys, and you indicate the information reveals the mental impressions, conclusions, and legal theories of the legal assistant and attorneys regarding the specified complaint. Based on your representations and our review, we agree the submitted information is protected work product. Accordingly, the board may withhold the submitted information under section 552.111 of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted 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,

A handwritten signature in black ink, appearing to read 'Meagan J. Conway', is written over a faint, light-colored signature line.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 604104

Enc. Submitted documents

c: Requestor
(w/o enclosures)