



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 2, 2026

Mr. Evan Reed
Senior Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950

OR2026-044243

Dear Mr. Reed:

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# 26-041271 (Reference No. 26-TPIA-1141 JSL, W209874-072226).

The City of El Paso (the "city") received a request for information pertaining to a specific litigation matter. You claim some of the submitted information is excepted from disclosure under sections 552.107, 552.111 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or 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(16). The submitted information consists of attorney fee bills subject to section 552.022(a)(16). The city must release this information pursuant to section 552.022(a)(16) of the Government Code unless it is made confidential under the Act or other law. *See id.* Although you raise sections 552.107 and 552.111 of the Government Code for the information at issue, these are discretionary exceptions to disclosure and do

not make information confidential under the Act. *See* Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 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). Therefore, none of the submitted information may be withheld under section 552.107 or section 552.111. However, the Texas Supreme Court has held the Texas Rules of Evidence and 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). Thus, we will consider the city’s assertions of the attorney-client privilege under Texas Rule of Evidence 503 and attorney work-product privilege under Texas Rule of Civil Procedure Rule 192.5 for the information at issue.

Texas Rule of Civil Procedure 192.5 encompasses the attorney work product privilege. 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). 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. *Id.* 192.5; *See also* ORD 677 at 4-8. In order for this office to conclude the information was made or developed in anticipation of litigation, we must be satisfied that

- 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; ORR 677 at 7.

You claim information at issue consists of privileged attorney work product that is protected by rule 192.5 of the Texas Rules of Civil Procedure. You state the information at issue consists of materials prepared by an attorney for the city in anticipation of litigation. Upon

review, we find you have demonstrated the information at issue constitutes privileged attorney work product. Therefore, we conclude the city may withhold the information you marked under Texas Rule of Civil Procedure 192.5.¹

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 city must withhold all routing and bank account numbers within the remaining information under section 552.136 of the Government Code.²

In summary, the city may withhold the information you marked under Texas Rule of Civil Procedure 192.5. The city must withhold all routing and bank account numbers within the remaining information under section 552.136 of the Government Code. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Ivana Kentera
Assistant Attorney General
Open Records Division

IK/jxd

Ref: ID# 26-041271

c: Requestor

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.