

January 25, 2017

RESOLUTION

WHEREAS, the Dallas Police & Fire Pension System (System) has taken steps that include: (1) making risky investments through limited-purpose entities that it has formed without any legal authority, or with which it has partnered without legal authority, under agreements that purport to make information about such entities secret; (2) borrowing to make investments instead of only investing “surplus” as required by law; (3) engaging in extensive, expensive, and unnecessary travel around the world by board members for the ostensible purpose of inspecting investments; (4) authorizing excessive disbursements to pensioners from DROP accounts even when the amount of such disbursements impaired the Dallas Police & Fire Pension System’s ability to pay retirement, disability, and survivor pension benefits; (5) considering the sale of assets to resume DROP disbursements even after temporarily deferring them under a judicial order; (6) authorizing additional millions of dollars in response to “cash calls” from investment enterprises even when such disbursements also impair the Dallas Police & Fire Pension System’s ability to pay retirement, disability, and survivor pension benefits; (7) allowing the system and undisclosed investments to be run by current and former employees who are not fiduciaries of the system; (8) making board decisions without properly posting agendas that adequately describe items to be discussed or actions to be considered, as required by law; and (9) incurring wasteful, uncontrolled, and high administrative expenses;

WHEREAS, the Dallas Police & Fire Pension System’s practices, including overstating asset values, misclassifying risky investments to make them appear safer and to make the system’s investments appear more diversified, entering into opaque investment agreements, and failing to post sufficiently informative agenda items, as required by law, are among the many methods that the System has used to evade state and city oversight that would have prevented many, if not all, of the enumerated improper practices and the current dire financial condition;

WHEREAS, the System has gone to the lengths of hiring a private investigator to conduct a forensic trace on a councilmember trustee who publicly opposed the System’s irresponsible steps and clandestine practices;

WHEREAS, Article 6243a-1 governs the pension funds of police officers and fire fighters to permit the consolidation of the terms of certain pension plans;

WHEREAS, Article 6243a-1 delegates unfettered powers to the System and its board and members, with no meaningful standards or safeguards, and therefore the funds supposedly held in trust by the system must be protected by a duly appointed and authorized fiduciary operating under court supervision;

WHEREAS, several past and current System board members appear to have direct personal financial interests, including sizable balances under the System's Deferred Retirement Option Plan (DROP) program, creating material conflicts between their personal financial interests and the interests of the System and its members, pensioners, and beneficiaries, but they have consistently failed to recuse themselves from board decisions and instead have deliberated and voted on matters subject to those conflicts, and appear determined to continue this practice, and therefore the System and its members and pensioners must be protected by a disinterested and loyal fiduciary;

WHEREAS, some of the persons who administer Article 6243a-1 apparently interpret it to limit or eliminate the city's powers to protect the financial security of its valued first responders, retired first responders, and their families and survivors;

WHEREAS, the System's board has administered plan assets in a manner that impairs the system's ability to achieve its primary fiduciary purpose of paying retirement, disability, and survivor pension benefits;

WHEREAS, Article 6243a-1's lack of limits, checks, and balances on the powers of the pension system board and plan members make it difficult or impossible for the state or the city to obtain necessary records and information needed for adequate oversight of the System, and permitted the System for years to overstate asset values to conceal its deteriorating financial condition from the city, the state, and its own members, directly causing the current emergency situation;

WHEREAS, because of the above and other deficiencies in Article 6243a-1, the Dallas Police & Fire Pension System has escaped any meaningful governance supervision, leading to incurrence of obligations far in excess of assets, increased benefits and features such as shockingly generous DROP returns, without the ability to honor those commitments, and materially diminished morale, security, and retention among important first responders who participate in plans administered by the Dallas Police & Fire Pension System;

WHEREAS, the city has insufficient tools under Article 6243a-1 to enable the city to protect the System's pensioners' retirement, disability, and survivor pension benefits while maintaining its own fiscal health and the safety of its residents;

WHEREAS, this situation has created a crisis posing an imminent and substantial threat to the fiscal health and public safety of the city;

WHEREAS, the System board, if it validly exists, is constitutionally and statutorily required to hold assets of the system in trust but has inexplicably abandoned its fiduciary obligations, as evidenced by, among other things, the board's stated intent to liquidate assets to resume uncontrolled DROP disbursements even while leaving underfunded its ability to pay retirement, disability, and survivor pensions;

WHEREAS, this situation as created an emergency substantially threatening the financial security of valued and courageous first responders who participate in pension plans created based on Article 6243a-1, as well as the financial security of their families;

WHEREAS, this emergency requires substantially increased control and oversight of the System;

WHEREAS, absent extraordinary measures, the Dallas Police & Fire Pension System will soon run out of sufficient funds to pay retirement, disability, and survivor pension benefits;

WHEREAS, the city's extensive and intensive efforts to negotiate agreed plan amendments and joint proposals to be considered by the Legislature to alleviate this emergency have been rejected by the System;

WHEREAS, until there are statutory changes that provide adequate governance tools to the city and/or financial support, the only remaining feasible method of meeting this emergency and of effectively supporting and protecting, for the near and long term, the Dallas Police & Fire Pension System, is extraordinary judicial action including, for example, receivership, declaratory relief, mandamus, and injunction; and,

WHEREAS, the public interest, the city's interest, and fundamental fairness require that the city indemnify and reimburse any and all such councilmembers who take such actions for their consequential expenses, and defend and indemnify them from any liability arising from such actions, and such indemnity, reimbursement, and defense will serve a public purpose; **Now, Therefore,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That the members of the city council who are also Dallas Police & Fire Pension System board members are strongly encouraged to take all lawful measures, including without limitation retaining outside counsel for the purpose of seeking judicial remedies, to address this dire emergency situation.

Section 2. That the city shall, to the fullest extent permitted by applicable law, indemnify, hold harmless, and defend all such councilmembers who take such actions from and against all losses, claims, actions, demands, obligations, judgments, settlements, damages, liabilities, costs, and/or expenses of any kind (including without limitation attorneys' fees and costs), whether or not involving a third-party claim, to which such councilmembers may become subject that in any way arise from, relate to, and/or result from any such actions.

Section 3. If any such councilmember takes any such actions, including without limitation retaining outside counsel for the purpose of seeking judicial remedies, the city shall pay (as they are incurred) such councilmember's legal and other expenses (including without limitation attorneys' fees and costs, and the costs of any investigation

and/or preparation) incurred in connection therewith; provided, however, that the city attorney will review any such payments to ensure the public purpose is accomplished and the public's investment is protected, and that no payment shall be made without the city attorney's approval on those grounds, which approval shall not be unreasonably withheld.

Section 4. If any such councilmember seeks judicial remedies, such councilmember shall, to the fullest extent permitted by applicable law, apply for an order for payment by any adverse parties of such councilmember's legal expenses (including without limitation attorneys' fees and costs), and such councilmember shall direct payment to the city of any such legal expenses that such councilmember actually and finally recovers from any adverse parties.

Section 5. That the city remains dedicated to providing a secure pension for retired and disabled first responders and their families, and providing for survivors, while not jeopardizing the public treasury, and the city will receive a return benefit from the proposed reimbursement, defense, and indemnity because such legal action is necessary to save the System from looming insolvency, which would severely compromise the morale and retention of the city's first responders and result in substantial claims against the city that would be expensive and time-consuming to defend even though not meritorious, and there would be financial risks to the city.

Section 6. That regardless of any legal action by the city council members who are trustees of the System or by others, the city will continue to seek consensual remedies for this emergency situation.

Section 7. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the city of Dallas, and it is accordingly so resolved.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

By _____
Assistant City Attorney

Cause No. _____

DALLAS POLICE AND
FIRE PENSION SYSTEM,

v.

HONORABLE KEN PAXTON,
ATTORNEY GENERAL OF
THE STATE OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Dallas Police and Fire Pension System, plaintiff, and files this original petition pursuant to section 552.324 of the Texas Government Code, seeking to challenge Letter Ruling ORD2016-20208, and would respectfully show unto the Court the following:

I. PARTIES

1.01. The Dallas Police and Fire Pension System (“DPFP”) is a Pension System created by Acts of the 43rd Texas Legislature, Article 6243a, currently governed by Article 6243a-1, and situated in Dallas County, Texas, incorporated in and operating under the laws of the State of Texas.

1.02. The Honorable Ken Paxton is the Attorney General of the State of Texas (“Attorney General”). The Attorney General may be served at Price Daniel, Sr. Building, 8th Floor, 209 W. 14th Street, Austin, Travis County, Texas 78701.

II. STATEMENT REGARDING DAMAGES

2.01. The damages sought by the DFPF are within the jurisdictional limits of this Court. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, the DFPF seeks monetary relief of \$100,000 or less and non-monetary relief.

III. DISCOVERY CONTROL PLAN

3.01. Discovery is intended to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

IV. VENUE AND JURISDICTION

4.01. Venue is proper in this court and jurisdiction exists pursuant to § 552.324 of the Texas Government Code.

4.02. In accordance with § 552.325(b) of the Texas Government Code, the DFPF will notify the requestor by certified mail, return receipt requested, of the following:

- a. The existence of the suit, including the subject matter and cause number of the suit and the court in which the suit is filed;
- b. The requestor's right to intervene in the suit or to choose not to participate in the suit;
- c. The fact that the suit is against the Attorney General in Travis County district court; and
- d. The address and phone number of the Office of the Attorney General.

V. FACTS

5.01. This case arises under the DFPF's obligations under the Texas Public Information Act ("PIA"). The PIA was enacted to provide "complete information about the affairs of government and the official acts of public officials and employees." TEX. GOV'T CODE § 552.001.

To that end, courts have instructed that the PIA is to be liberally construed in favor of a request for information. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 356 (Tex. 2000). But the PIA commands that certain information may not be disclosed.

5.02. DFPF manages pension investments for the City of Dallas' police officers and fire fighters.

5.03. On or about June 17, 2016, the DFPF received a PIA request from Julie Kobel ("Kobel"). Kobel requested the following 20 items:

- 1601-001 Diamond McCarthy - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.
- 1601-002 Diamond McCarthy - All invoices received by the Dallas Police & Fire Pension System from the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.
- 1601-003 Diamond McCarthy - All detailed billings received by the Dallas Police & Fire Pension System from the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.
- 1601-004 Open Records Requests - Identify all "Open Records Requests" received by the Dallas Police & Fire Pension System during the period January 1, 2014, thru present.
- 1601-005 Attorney General Rulings - Identify all "Open Records Requests" referred by the Dallas Police & Fire Pension System to the Texas Attorney General's office for legal ruling and/or legal opinion during the period from January 1, 2014, thru present.
- 1601-006 Dallas Morning News - Copies of all "Open Records Requests" received by the Dallas Police & Fire Pension System from the Dallas Morning News, its employees, attorneys, law firms, and/or agents acting on behalf of the Dallas Morning News during calendar year 2015.

- 1601-007 Clark Law Firm - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and Clark Law Firm, its employees and/or agents, firms or persons acting on behalf of Clark Law Firm during the period January 1, 2015, thru present.
- 1601-008 Clark Law Firm - All invoices received by the Dallas Police & Fire Pension System from Clark Law Firm, its employees and/or agents, firms or person acting on behalf of Clark Law Firm during the period January, 1, 2015, thru present.
- 1601-009 Clark Law Firm - All detailed billings received by the Dallas Police & Fire Pension System from Clark Law Firm, its employees and/or agents, firms, or person acting on behalf of Clark Law Firm during the period January 1, 2015, thru present.
- 1601-010 Prospere and Russell - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015, thru present.
- 1601-011 Prospere and Russell - All invoices received by the Dallas Police & Fire Pension System from the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015 thru present.
- 1601-012 Prospere and Russell - All detailed billings received by the Dallas Police & Fire Pension System from the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015 thru present.
- 1601-013 Nicole Knox - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.
- 1601-014 Nicole Knox - All invoices received by the Dallas Police & Fire Pension System from Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.
- 1601-015 Nicole Knox - All detailed billings received by the Dallas Police & Fire Pension System from Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.

- 1601-017 Investigations International - All invoices received by the Dallas Police & Fire Pension System from Investigations International, its employees and/or agents, firms or persons acting on behalf of Investigations International during calendar year 2013.
- 1601-018 Investigations International - All detailed billings received by the Dallas Police & Fire Pension System from Investigations International, its employees and/or agents, firms or persons acting on behalf of Investigations International during calendar year 2013.
- 1601-020 Argyle Volunteer Fire District - All invoices received by the Dallas Police & Fire Pension System from the Argyle Volunteer Fire District, its employees and/or agents, firms or persons acting on behalf of the Argyle Volunteer Fire District during April 2016.
- 1601-021 American Express - All invoices/billings from American Express paid by the Dallas Police & Fire Pension System during April 2016.
- 1601-022 Card Member Service (8732) - All invoices/billings from Card Member Service (8732) paid by the Dallas Police & Fire Pension System during April 2016.

See the attached Exhibit A, which is incorporated herein by reference.

5.04. On July 1, 2016, the DPFPP requested a determination from the Attorney General regarding the request and asserted the information responsive to the request was excepted from public disclosure based upon sections 552.101, 552.103, 552.107, 552.143 of the Government Code, Rule 503 of the Texas Rules of Evidence, and rule 192.5 of the Texas Rules of Civil Procedure. *See* the attached Exhibit B, which is incorporated herein by reference.

5.05. On September 12, 2016, the DPFPP received an opinion from the Attorney General which determined that the DPFPP may withhold a portion of information marked under rule 503 of the Texas Rules of Evidence, rule 192.5 of the Texas Rules of Civil Procedure, and withhold information not subject to section 552.022 under section 552.103 of the Government Code. *See* the attached Exhibit C, which is incorporated herein by reference. DPFPP contests this finding with respect to the documents the Attorney General requires DPFPP to release. DPFPP does not contest

the ruling with respect to the documents DPF is allowed to withhold. The DPF contends that the requested documents include information that is subject to sections 552.101, and 552.107 of the PIA. The Attorney General's opinion, ORD2016-20208, should therefore be withdrawn in part.

VI. CAUSES OF ACTION

DECLARATORY JUDGMENT

6.01. The DPF is a "person" under § 37.001 of the Texas Uniform Declaratory Judgment Act.

6.02. This suit by the DPF challenging ORD2016-20208 is brought pursuant to section 552.324 of the Texas Government Code. It has been filed timely within the statutory 30 days of receiving the ruling from the Attorney General.

6.03. The DPF seeks declaratory relief from compliance with the decision by the Attorney General to the extent DPF is ordered to release documents. Specifically, the DPF seeks a declaration that

- a. the documents requested be excepted from disclosure under the PIA as requested, specifically Government Code §552.101, §552.103, §552.107 and §552.143, rule 503 of the Texas Rules of Evidence, and rule 192.5 of the Texas Rules of Civil Procedure.
- b. ORD2016-20208 be vacated to the extent the Attorney General has ordered the DPF to release documents.

VII. ATTORNEY'S FEES

7.1 Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009, the DPF has been required to retain the services of attorneys to enforce the rights between the parties and is entitled to recover

reasonable and necessary attorney's fees. The DFPF is entitled to the recovery of the reasonable and necessary attorney's fees for the preparation and trial of this case, and additional attorney's fees in the event of an appeal or other proceedings before the Austin Court of Appeals or the Texas Supreme Court.

VIII. PRAYER

WHEREFORE, plaintiff Dallas Police and Fire Pension System asks that the Court issue citation for the defendant to appear and answer, and that the Court render a judgment:

- i. Declaring that the documents requested be excepted from disclosure under the PIA as requested specifically under § 552.101, § 552.103, § 552.107 and § 552.143, rule 503 of the Texas Rules of Evidence, and rule 192.5 of the Texas Rules of Civil Procedure;
- ii. Declaring that ORD2016-20208 be vacated in part;
- ii. Awarding plaintiff reasonable and necessary attorney's fees;
- iii. Awarding plaintiff costs of suit; and
- iv. Awarding plaintiff all other relief, in law and in equity, to which the plaintiff may be entitled.

/s/ Julie Y. Fort

JULIE Y. FORT

State Bar No. 00793741

julie@txmunicipallaw.com

WM. ANDREW MESSER

State Bar No. 13472230

andy@txmunicipallaw.com

BRETT GARDNER

STATE BAR NO. 24078539

brett@txmunicipallaw.com

MESSER ROCKEFELLER & FORT, PLLC

6351 PRESTON ROAD, SUITE 350

FRISCO, TEXAS 75034

972.668.6400 - TELEPHONE

972.668.6414 – FACSIMILE

COUNSEL FOR PLAINTIFF

DALLAS POLICE AND FIRE PENSION SYSTEM



Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-001**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Diamond McCarthy - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing records responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-002**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Diamond McCarthy - All invoices received by the Dallas Police & Fire Pension System from the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing records responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-003**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Diamond McCarthy – All detailed billings received by the Dallas Police & Fire Pension System from the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing records responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-004**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Open Records Requests – Identify all “Open Records Requests” received by the Dallas Police & Fire Pension System during the period January 1, 2014, thru present. .

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-005**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Attorney General Rulings – Identify all “Open Records Requests” referred by the Dallas Police & Fire Pension System to the Texas Attorney General’s office for legal ruling and/or legal opinion during the period from January 1, 2014, thru present; and

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

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Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-006**

Pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Dallas Morning News – Copies of all “Open Records Requests” received by the Dallas Police & Fire Pension System from the Dallas Morning News, its employees, attorneys, law firms, and/or agents acting on behalf of the Dallas Morning News during calendar year 2015.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-007**

Pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the "Dallas Police & Fire Pension System"):

1. Clark Law Firm - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and Clark Law Firm, its employees and/or agents, firms or persons acting on behalf of Clark Law Firm during the period January 1, 2015, thru present.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-008**

Pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Clark Law Firm - All invoices received by the Dallas Police & Fire Pension System from Clark Law Firm, its employees and/or agents, firms or persons acting on behalf of Clark Law Firm during the period January 1, 2015, thru present.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-009**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Clark Law Firm - All detailed billings received by the Dallas Police & Fire Pension System from Clark Law Firm, its employees and/or agents, firms or persons acting on behalf of Clark Law Firm during the period January 1, 2015, thru present.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

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Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-010**

Pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the "Dallas Police & Fire Pension System"):

1. Prospere and Russell - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015, thru present.

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Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
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Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-011**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Prospere and Russell - All invoices received by the Dallas Police & Fire Pension System from the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015 thru present.

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Sincerely,

/s/ Julie Kobel

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June 17, 2016

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Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-012**

Pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the "Dallas Police & Fire Pension System"):

1. Prospere and Russell - All detailed billings received by the Dallas Police & Fire Pension System from the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015 thru present.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-013**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Nicole Knox - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-014**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Nicole Knox - All invoices received by the Dallas Police & Fire Pension System from Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-015**

Pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the "Dallas Police & Fire Pension System"):

1. Nicole Knox - All detailed billings received by the Dallas Police & Fire Pension System from Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-017**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Investigations International - All invoices received by the Dallas Police & Fire Pension System from Investigations International, its employees and/or agents, firms or persons acting on behalf of Investigations International during calendar year 2013.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-018**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Investigations International – All detailed billings received by the Dallas Police & Fire Pension System from Investigations International, its employees and/or agents, firms or persons acting on behalf of Investigations International during calendar year 2013.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-020**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Argyle Volunteer Fire District - All invoices received by the Dallas Police & Fire Pension System from the Argyle Volunteer Fire District, its employees and/or agents, firms or persons acting on behalf of the Argyle Volunteer Fire District during April 2016.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-021**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. American Express - All invoices/billings from American Express paid by the Dallas Police & Fire Pension System during April 2016.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel

Post Office Box 455
Addison, TX 75001-0455

June 17, 2016

Office for Public Information
Dallas Police & Fire Pension System
4100 Harry Hines Boulevard, Suite 100
Dallas, Texas 75219

Dear Public Information Officer:

**RE: Texas Public Information Act – Open Records Request
Dallas Police & Fire Pension System
ID # 1601-022**

Pursuant to the Texas Public information Act, Chapter 552, Texas Government Code, please provide the following information regarding the City of Dallas Police & Fire Pension System, its employees, and its Board of Trustees (collectively, the “Dallas Police & Fire Pension System”):

1. Card Member Service (8732) - All invoices/billings from Card Member Service (8732) paid by the Dallas Police & Fire Pension System during April 2016.

Please note I am requesting a written itemized statement of estimated charges be provided in advance of work being started should the estimated charge for producing information responsive to this Open Records Request exceed \$10. Thank you.

Sincerely,

/s/ Julie Kobel



MESSER * ROCKEFELLER * FORT
THE MUNICIPAL LAW FIRM

July 1, 2016

Via CMRRR #7012 1640 0000 0420 1895

The Honorable Ken Paxton
Attorney General of Texas
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Determination of availability of information requested under the Public Information Act by Julie Kobel

Dear General Paxton:

This law firm represents the Dallas Police and Fire Pension System (“DPFP”). DPFP received twenty requests¹ for information (collectively “Requests”) under the Public Information Act (“Act”) from Julie Kobel (“Requestor”). Copies of the Requests were received by DPFP on June 17, 2016, and are attached as ***Exhibit 1***. ***Exhibit 1*** constitutes evidence of the date DPFP received the Requests under section 552.301(e)(1)(C) of the Texas Government Code. Requestor seeks the following and DPFP’s notations are italicized below:

1601-001 Diamond McCarthy - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.

*Responsive documents enclosed as **Exhibit 2**.*

1601-002 Diamond McCarthy - All invoices received by the Dallas Police & Fire Pension System from the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.

*Responsive documents enclosed as **Exhibit 3**.*

1601-003 Diamond McCarthy - All detailed billings received by the Dallas Police & Fire Pension System from the law firm of Diamond McCarthy, its employees and/or agents, firms or persons acting on behalf of Diamond McCarthy during the period January 1, 2014, thru present.

*Responsive documents enclosed as **Exhibit 3**.*

DALLAS

6351 Preston Rd. • Suite 350
Frisco, TX 75034
P: 972.668.6400 • F: 972.668.6414
Toll Free: 1.855.668.6400

MESSER, ROCKEFELLER & FORT, PLLC
www.txmunicipallaw.com

ABILENE

4400 Buffalo Gap Rd. • Suite 2800
Abilene, TX 79606
P: 325.701.7960 • F: 325.701.7961

1601-004 Open Records Requests - Identify all "Open Records Requests" received by the Dallas Police & Fire Pension System during the period January 1, 2014, thru present.

*Responsive documents enclosed as **Exhibit 4**.*

1601-005 Attorney General Rulings - Identify all "Open Records Requests" referred by the Dallas Police & Fire Pension System to the Texas Attorney General's office for legal ruling and/or legal opinion during the period from January 1, 2014, thru present.

*Responsive documents enclosed as **Exhibit 4**.*

1601-006 Dallas Morning News - Copies of all "Open Records Requests" received by the Dallas Police & Fire Pension System from the Dallas Morning News, its employees, attorneys, law firms, and/or agents acting on behalf of the Dallas Morning News during calendar year 2015.

*Responsive documents enclosed as **Exhibit 5**.*

1601-007 Clark Law Firm - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and Clark Law Firm, its employees and/or agents, firms or persons acting on behalf of Clark Law Firm during the period January 1, 2015, thru present.

No responsive documents.

1601-008 Clark Law Firm - All invoices received by the Dallas Police & Fire Pension System from Clark Law Firm, its employees and/or agents, firms or person acting on behalf of Clark Law Firm during the period January, 1, 2015, thru present.

*Responsive documents enclosed as **Exhibit 6**.*

1601-009 Clark Law Firm - All detailed billings received by the Dallas Police & Fire Pension System from Clark Law Firm, its employees and/or agents, firms, or person acting on behalf of Clark Law Firm during the period January 1, 2015, thru present.

*Responsive documents enclosed as **Exhibit 6**.*

1601-010 Prospere and Russell - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and the law firm of Prospere and Russell, its employees and/or agents, firms

or persons acting on behalf of Prospere and Russell during the period January 1, 2015, thru present.

No responsive documents.

1601-011 Prospere and Russell - All invoices received by the Dallas Police & Fire Pension System from the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015 thru present.

*Responsive documents enclosed as **Exhibit 7.***

1601-012 Prospere and Russell - All detailed billings received by the Dallas Police & Fire Pension System from the law firm of Prospere and Russell, its employees and/or agents, firms or persons acting on behalf of Prospere and Russell during the period January 1, 2015 thru present.

*Responsive documents enclosed as **Exhibit 7.***

1601-013 Nicole Knox - All agreements, contracts, and/or engagement agreement letters by and between the Dallas Police & Fire Pension System and Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.

*Responsive documents enclosed as **Exhibit 8.***

1601-014 Nicole Knox - All invoices received by the Dallas Police & Fire Pension System from Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.

*Responsive documents enclosed as **Exhibit 8.***

1601-015 Nicole Knox - All detailed billings received by the Dallas Police & Fire Pension System from Nicole Knox, her employees and/or agents, firms or persons acting on behalf of Nicole Knox during the period January 1, 2015, thru present.

*Responsive documents enclosed as **Exhibit 8.***

1601-017 Investigations International - All invoices received by the Dallas Police & Fire Pension System from Investigations International, its employees and/or agents, firms or persons acting on behalf of Investigations International during calendar year 2013.

*Responsive documents enclosed as **Exhibit 9.***

1601-018 Investigations International - All detailed billings received by the Dallas Police & Fire Pension System from Investigations International, its employees and/or agents, firms or persons acting on behalf of Investigations International during calendar year 2013.

*Responsive documents enclosed as **Exhibit 9**.*

1601-020 Argyle Volunteer Fire District - All invoices received by the Dallas Police & Fire Pension System from the Argyle Volunteer Fire District, its employees and/or agents, firms or persons acting on behalf of the Argyle Volunteer Fire District during April 2016.

No responsive documents.

1601-021 American Express - All invoices/billings from American Express paid by the Dallas Police & Fire Pension System during April 2016.

*Responsive documents enclosed as **Exhibit 10**.*

1601-022 Card Member Service (8732) - All invoices/billings from Card Member Service (8732) paid by the Dallas Police & Fire Pension System during April 2016.

*Responsive documents enclosed as **Exhibit 11**.*

DPPF seeks a determination from your office confirming that some or all of the requested records and information are exempt from public disclosure pursuant to certain exceptions provided in the Act. Section 552.301(b) of the Texas Government Code prescribes that a written request for an Attorney General's ruling must be made within ten (10) business days after the date the governmental body receives the written request for information. Accordingly, this request for a ruling made on July 1, 2016, is timely and made in accordance with section 552.301(b). DPPF may send additional written comments within the next 5 business days in accordance with section 552.301(e)(1)(A).

Further, in compliance with section 552.303 of the Texas Government Code, copies of the records responsive to the Requests are being produced to your office with this request for a determination. The requested records DPPF claims to be exempt from public disclosure are marked as **Exhibits 2-11**. Pursuant to section 552.301(d) of the Texas Government Code, a copy of this letter is being sent to the Requestor without exhibits.

Background information relevant to the Requests:

In early 2002, DPPF hired Columbus Alexander ("Alexander") d/b/a CFOpros to conduct financial accounting for DPPF. The information concerning Alexander is relevant to these Requests because DPPF has good reason to believe Alexander and Requestor are closely related. **Exhibit 12**. By

mid 2002, a dispute arose between DFPF and Alexander and the parties became involved in a lawsuit filed in Dallas County in which both parties were represented by counsel. The dispute was resolved by the settlement agreement enclosed as **Exhibit 13**. The settlement agreement stated the following: “[t]he Pension System, its trustees, and employees agree not to call upon or contact Mr. Alexander, or use his services and knowledge, in any way in the future, and likewise Mr. Alexander will not call upon or contact the Pension System, its Trustees or employees.” The settlement agreement was executed by all parties and an order to non-suit was entered by the court on August 19, 2002. **Exhibit 13**.ⁱⁱ DFPF has complied with all of its obligations under the settlement agreement, including paying Alexander all sums agreed to in the settlement agreement.

Alexander abided by this agreement until April 6, 2016, when he submitted a public information request to DFPF. **Exhibit 14**. DFPF submitted this request to your office as **OAG Request ID # 616065**. Alexander again violated the settlement agreement by submitting a total of twelve requests from May 16 to May 19, 2016. **Exhibit 15**. In response to these requests, the DFPF sent Alexander notification on May 23, 2016, he was in violation of the settlement agreement. **Exhibit 16**. In response to this notification, Alexander withdrew all outstanding requests on May 27, 2016. **Exhibit 17**.

Then on June 1, June 6, June 8, and June 10, 2016, Requestor submitted four requests to DFPF. **Exhibit 18**. DFPF responded to the June 1 request with a cost estimate letter. **Exhibit 19**. On June 10, 2016, DFPF also sent Alexander, with a copy to the Requestor, a second notification of his violation of the settlement agreement. **Exhibit 20**. DFPF had reason to believe that Requestor has a close relationship with Alexander based on the information contained in **Exhibit 12**, the similarity in format of Alexander and Requestor’s letters, the same “@dpfps.com” email address used by Alexander and Requestor, and the information requested by Alexander and Requestor is nearly identical. On June 16 and 17, 2016, DFPF received notice the Requestor withdrew all requests submitted on June 1, June 6, June 8, and June 10, 2016. **Exhibit 21**.

Subsequently on June 17, 2016, Requestor submitted the twenty Requests at issue. **Exhibit 1**. DFPF, based upon the belief that Alexander himself is submitting or motivating Requestor to submit the requests, filed suit against Alexander on June 23, 2016. **Exhibit 22**. Alexander while under full legal counsel by his attorney, agreed in the 2002 settlement agreement that he would not contact DFPF. Alexander waived his legal right to request public information from DFPF by entering into the settlement agreement. Alexander, himself and through the Requestor, has violated this agreement on numerous occasions. DFPF notified Alexander and Requestor of these defaults prior to filing suit. In addition, Alexander and Requestor have left DFPF in a difficult position – to either comply with the 2002 settlement agreement or violate the Texas Public Information Act.

Brief of Law in Support of Exceptions

DFPF contends that certain information in the requested records is exempt from disclosure based upon the Texas Government Code, Chapter 552, Sections 552.101 and 552.103 and 552.107 and 552.143.

Confidential Information by Law under § 552.101

DPFP asserts that ***Exhibits 2-11*** in their entirety are subject to the confidentiality exception. Section 552.101 of the Texas Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” As previously explained, the 2002 settlement agreement of a court case makes the information sought by these Requests confidential to Alexander and the Requestor, whom Alexander is operating through in an attempt to circumvent the settlement agreement. Therefore, DPFP contends the information sought by the Requests is confidential under 552.101 in conjunction with the 2002 settlement agreement.

Litigation Exception Under § 552.103

DPFP contends that all of the requested records in ***Exhibits 2-11*** are exempt from disclosure under Texas Government Code, Section 552.103, also known as the litigation exception. Section 552.103 provides exemption from required disclosure as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov’t Code § 552.103(a)(c). To establish the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App. - Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App. -Houston [1st Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 551 at 4 (1990).

As previously explained and evidenced in ***Exhibits 16 & 20***, DPFP notified Alexander and Requestor of noncompliance with the 2002 settlement agreement and specifically identifying two potential causes of action that require litigation (seeking specific performance and seeking return of money paid to Alexander as consideration for the settlement agreement) well in advance of the June 17, 2016, Requests. Accordingly, litigation was reasonably anticipated on the date DPFP received the Requests and litigation did so commence on June 23, 2016. ***Exhibit 22***. The information at issue in these Requests is related to the litigation because the very act of making the requests in violation of the 2002 settlement agreement is the reason DPFP has filed litigation against Alexander. Therefore, DPFP contends the information in ***Exhibits 2-11*** is confidential under 552.103.

Attorney-Client Privilege under § 552.101 and § 552.107

DPFP contends that the requested records in ***Exhibits 2, 3, 6, 7, & 8*** are excepted from disclosure under the Texas Government Code, Sections 552.107 and 552.101, as it is information which the attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence, Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Sections 552.107 and 552.101 protect the same information as protected under Texas Rule of Evidence 503. *See* Open Records Decision Nos. 676 at 1-3 (2002), 575 at 2 (1990); *see also* *City of Dallas v. Paxton*, 2015 WL 601974 (Tex. App. – Corpus Christi Feb. 12, 2015) *citing* *Abbott v. City of Dallas*, 2014 WL 7466736 (Tex. App. – Austin Dec. 23, 2014). Thus, the standard for demonstrating the attorney-client privilege under the Act is the same as the standard used in discovery under Rule 503. Rule 503 of the Texas Rules of Evidence encompasses the attorney-client privilege and provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

- (A) between the client or the client's representative and the client's lawyer or the lawyer's representative;
- (B) between the client's lawyer and the lawyer's representative;
- (C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;
- (D) between the client's representatives or between the client and the client's representative; or
- (E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1) (2015).

In order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must: (1) demonstrate the information constitutes or documents a communication, (2) the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body, (3) demonstrate that the communication was between or among clients, client representatives, lawyers, and lawyer representatives, and (4) the communication was confidential and “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *See* Open Records Decision No. 676 at 7-10; *see also* TEX. R. EVID. 503.

The documents contained in ***Exhibits 2, 3, 6, 7, & 8*** contain information that meets all four elements establishing the attorney-client privilege. First, the information contained in these exhibits was communicated between the four law firms retained by DPFP and DPFP authorized

representatives. The documents in **Exhibits 2, 3, 6, 7, & 8** constitute communications, as they are bills from the attorneys' offices to DPFPP detailing the legal services performed. Second, **Exhibits 2, 3, 6, 7, & 8** constitutes communications made for the purpose of facilitating the rendition of professional legal services because DPFPP, through its authorized representatives, requested legal counsel to perform specified tasks. Additionally, **Exhibits 2, 3, 6, 7, & 8** contain detailed communications and recommended courses of action based upon the results of the tasks performed by the attorney. Third, the communications were confidential between the attorneys and DPFPP representatives and were not intended to be disclosed. Finally, the communications have remained confidential, have not been reviewed by any other party other than the attorneys and DPFPP representatives duly authorized to seek legal advice on DPFPP's behalf. Privilege has not been waived by DPFPP. Therefore, the communications contained in **Exhibits 2, 3, 6, 7, & 8** are excepted from disclosure under Sections 552.101 and 552.107 of the Act because the information contained therein is protected by the attorney-client privilege in its entirety. Alternatively, if your office does not conclude that the entirety of the records in **Exhibits 2, 3, 6, 7, & 8** are excepted from disclosure, DPFPP has provided notations within **Exhibits 2, 3, 6, 7, & 8** for which DPFPP contends is information exempted from disclosure under Sections 552.101 and 552.107 and protected by the attorney-client privilege.

Attorney Work Product Privilege under § 552.101

DPFPP contends information contained in **Exhibits 2, 3, 7, 8, & 9** are subject to the attorney work product privilege. Texas Rule of Civil Procedure 192.5 encompasses the attorney work product privilege in conjunction with 552.101 of the Act. For purposes of Section 552.022 of the Government Code, information is confidential under Rule 192.5 to the extent the information implicates the core work product aspect of the work product privilege. *See* ORD 677 at 9-10. Rule 192.5 defines core work product as the work product of an attorney or an attorney's representative, developed in anticipation of litigation or for trial, which contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney's representative. *See* TEX. R. CIV. P. 192.5(a) and (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under Rule 192.5, a governmental body must demonstrate the material was: (1) created for trial or in anticipation of litigation; and (2) consists of the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. A document containing core work product information that meets both parts of the work product test is confidential under Rule 192.5, provided the information does not fall within the scope of the exceptions to the privilege enumerated in Rule 192.5(c). *See* *In re Exxon Mobil Corp.*, 97 S.W.3d 653, 357 (Tex. App.—Houston [14th Dist] 2003, no writ) (*citing* *Pittsburgh Corning Corp v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

The first prong of the work product test, which requires a governmental body to show the information at issue was created in anticipation of litigation or created for trial. Documents in **Exhibits 2, 3, 7, 8, & 9** indicate the litigation the attorney invoiced and billed to DPFPP. These attorney bills were created in anticipation of litigation and trial. Thus the first prong is met.

The second prong of the work product test requires the governmental body to show that the materials at issue contain the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *See* TEX. R. CIV. P. 192.5(b)(1). The information

highlighted in the attorney fee bills contains mental impressions and opinions of the attorneys which is preparing the case for trial. The highlighted information reveals legal strategy and the direction defense counsel is taking the case, which is the essence of attorney work product. Both prongs of the test to demonstrate attorney work product are met in regards to the highlighted information in *Exhibits 2, 3, 7, 8, & 9*.

Confidentiality of Certain Investment Information under § 552.143

DPFP contends information contained in *Exhibit 6* are subject to withholding under the Section 552.143 of the Government Code which provides in part as follows:

- (a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0025 (b) is confidential and excepted from the requirements of Section 552.021.
- (b) Unless the information has been publicly released, pre-investment and post investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

Information contained in *Exhibit 6* relates to pre and post investment diligence information on a variety of real estate projects. This firm detailed the ownership structures of the referenced entities and provided this information to DPFP. If your office allows DPFP to withhold *Exhibit 6*, DPFP will release the information as required by 552.0025(b) of the Act.

In summary, the DPFP contends that based upon the authorities cited above, all of the requested records and information which have been produced to your office for inspection in *Exhibits 2-11*, are excepted from disclosure, in whole or in part. Thank you for your consideration in this matter.

Very truly yours,
MESSER, ROCKEFELLER & FORT, PLLC



MARIE N. ROVIRA
ATTORNEY FOR THE PENSION

MNR/SG

Enclosures: Exhibits 1-22ⁱⁱⁱ

cc: Julie Kobel

via email: julie.kobel@dpfps.org

Joshua Mond
General Counsel
Dallas Police and Fire Pension System

ⁱ Requestor numbered her requests 1601-001 to 1601-022. However, there is no request numbered 1601-016 or 1601-019.

ⁱⁱ DFPF is attempting to locate the actual court filings and will send to your office within the next five days if located.

ⁱⁱⁱ Exhibit 1: Requests
Exhibit 2: Documents responsive to request 1601-001
Exhibit 3: Documents responsive to requests 1601-002 & 1601-003
Exhibit 4: Documents responsive to requests 1601-004 & 1601-005
Exhibit 5: Documents responsive to request 1601-006
Exhibit 6: Documents responsive to requests 1601-008 & 1601-009
Exhibit 7: Documents responsive to requests 1601-011 & 1601-012
Exhibit 8: Documents responsive to requests 1601-013, 1601-014, & 1601-015
Exhibit 9: Documents responsive to requests 1601-017 & 1601-018
Exhibit 10: Documents responsive to request 1601-021 AMEX - 021
Exhibit 11: Documents responsive to request 1601-022
Exhibit 12: Documents evidencing relationship between Requestor and Columbus Alexander
Exhibit 13: Settlement agreement between DFPF and Columbus Alexander and court docket
Exhibit 14: Request submitted by Columbus Alexander on April 6, 2016
Exhibit 15: Requests submitted by Columbus Alexander May 16 to May 19, 2016
Exhibit 16: First notification of default, May 23, 2016
Exhibit 17: Withdrawal of all outstanding requests, May 27, 2016
Exhibit 18: June 1, June 6, June 8, and June 10, 2016, requests from Requestor
Exhibit 19: Cost estimate letter, June 15, 2016
Exhibit 20: Second notification of default, June 10, 2016
Exhibit 21: Withdrawal of outstanding requests, June 16 and 17, 2016
Exhibit 22: *Dallas Police and Fire Pension System v. Columbus Alexander* petition, June 23, 2016



EXHIBIT
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SEP 12

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

BY:

September 7, 2016

Ms. Marie N. Rovira
Counsel for the Dallas Police and Fire Pension System
Messer, Rockefeller & Fort, PLLC
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2016-20208

Dear Ms. Rovira:

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# 625439.

The Dallas Police and Fire Pension System (the "system"), which you represent, received multiple requests from the same requestor for the following information during specified time periods: agreements, contracts, and engagement agreement letters by and between the system and specified third parties; invoices received by the system from specified third parties; detailed billings received by the system from specified third parties; all open records requests received by the system; all open records requests referred to the Office of the Attorney General; all open records requests received from the Dallas Morning News; and all invoices or billings from specified third parties paid by the system. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.143 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rule of Civil Procedure. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested

third party to submit to attorney general reasons why requested information should or should not be released).

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

(a) [T]he 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; [and]

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Id. § 552.022(a)(3), (16). The submitted information contains information in an account, contract, or voucher relating to the receipt or expenditure of funds by the system that is subject to section 552.022(a)(3) and attorney fee bills that are subject to section 552.022(a)(16). This information must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3), (16). Although you seek to withhold some of the information subject to section 552.022 under sections 552.103 and 552.107 of the Government Code, these exceptions are discretionary and do 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 Gov't Code § 552.103); *see also* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the information subject to section 552.022 may not be withheld under section 552.103 or section 552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence and Texas Rules of Civil Procedure are “other law” that makes information expressly confidential for purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will address the system's claims of the attorney-client privilege and the attorney-work product privilege under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. We note sections 552.101 and 552.143 can make information confidential under the Act. Accordingly, we will consider your arguments under sections 552.101 and 552.143 for the information subject to section 552.022, as well as the remaining

information. We will also consider your arguments for the submitted information not subject to section 552.022.

The system contends the submitted information should be withheld under section 552.101 of the Government Code in conjunction with a settlement agreement. The system states the terms of the settlement agreement stipulate that a named party to the settlement agreement “will not call upon or contact the [system,] its [t]rustees or employees.” Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. However, the system has not pointed to any statutory confidentiality provision, nor are we aware of any, that would make any of the information at issue confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the system may not withhold the information at issue under section 552.101 of the Government Code. Further, we note information is not confidential under the Act simply because the parties anticipate or request that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110 Government Code). Consequently, unless the submitted information comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client’s representative and the client’s lawyer or the lawyer’s representative;

(B) between the client’s lawyer and the lawyer’s representative;

(C) by the client, the client’s representative, the client’s lawyer, or the lawyer’s representative to a lawyer representing another party in a pending action or that lawyer’s representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must 1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; 2) identify the parties involved in the communication; and 3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under Rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You state the submitted fee bills contain communications between attorneys for the system and system representatives that were made for the purpose of facilitating the rendition of legal services to the system. You further state these communications were intended to be, and have remained, confidential. Based on your representations and our review, we conclude the system may withhold the information we have marked under rule 503 of the Texas Rules of Evidence.¹ However, you have not demonstrated the remaining information at issue consists of privileged attorney-client communications. Further, we note an entry stating a memorandum or an e-mail was prepared or drafted does not demonstrate the document was communicated to the client. Accordingly, the system may not withhold any of the remaining information at issue under rule 503 of the Texas Rules of Evidence.

Rule 192.5 of the Texas Rules of Civil Procedure encompasses the attorney work-product privilege. For purposes of section 552.022 of the Government Code, information is confidential under rule 192.5 only to the extent the information implicates the core

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

work-product aspect of the work-product privilege. *See* Open Records Decision No. 677 at 9–10 (2002). Rule 192.5 defines core work product as the work product of an attorney or an attorney’s representative, developed in anticipation of litigation or for trial, that contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney’s representative. *See* TEX. R. CIV. P. 192.5(a), (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under rule 192.5, a governmental body must demonstrate the material was (1) created for trial or in anticipation of litigation, and (2) consists of the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney’s representative. *Id.*

The first prong of the work product test, which requires a governmental body to show the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate (1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation there was a substantial chance litigation would ensue, and (2) the party resisting discovery believed in good faith there was a substantial chance litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See Nat’l Tank 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. The second part of the work-product test requires the governmental body to show the materials at issue contain the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney’s representative. *See* TEX. R. CIV. P. 192.5(b)(1). A document containing core work-product information that meets both parts of the work product test is confidential under rule 192.5, provided the information does not fall within the scope of the exceptions to the privilege enumerated in rule 192.5(c). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding).

You state the information you marked in the remaining information subject to section 552.022 of the Government Code consists of attorney core work product that is protected by rule 192.5 of the Texas Rules of Civil Procedure. You state this information was created in anticipation of litigation. You further state this information reflects attorneys’ mental impressions, conclusions, or legal theories. Having considered the submitted arguments and reviewed the information at issue, we conclude some of the information at issue, which we have marked, constitutes privileged attorney core work product that may be withheld under rule 192.5. Accordingly, the system may withhold the information we have marked under rule 192.5 of the Texas Rules of Civil Procedure. However, we find you have not demonstrated any of the remaining information at issue contains the mental impressions, opinions, conclusions, or legal theories of an attorney or the attorney’s representative that was developed in anticipation of litigation or for trial. We therefore conclude the system may not withhold any of the remaining information at issue under rule 192.5 of the Texas Rules of Civil Procedure.

Section 552.143 of the Government Code provides, in part, the following:

(a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from the requirements of Section 552.021.

(b) Unless the information has been publicly released, pre-investment and post-investment diligence information, including reviews and analyses, prepared for or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

Gov't Code § 552.143(a), (b). You contend the remaining information in Exhibit 6 is subject to section 552.143. You state the information at issue “relates to pre and post investment diligence information on a variety of real estate projects.” However, we find you have failed to demonstrate the information at issue was prepared or provided by a private investment fund or constitutes pre-investment or post-investment due diligence information. Accordingly, we find the system may not withhold this information under section 552.143 of the Government Code.

Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Id. § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); *Open Records Decision No. 551 at 4* (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

To establish litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect that litigation is “realistically contemplated.” *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding that investigatory file may be withheld from disclosure if governmental body attorney determines that it should be withheld pursuant to section 552.103 and that litigation is “reasonably likely to result”). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4.

You assert the information not subject to section 552.022 of the Government Code relates to litigation reasonably anticipated by the system. You state, and provide documentation showing, prior to the system’s receipt of the instant request, the system notified a named individual and the requestor of noncompliance with a specified settlement agreement and specifically identified two potential causes of action that require litigation. Based on these representations and our review, we find the system reasonably anticipated litigation at the time it received the request. You state the information at issue is directly related to the dispute between the system and the named individual and the requestor regarding the specified settlement agreement. We find the information at issue is related to the anticipated litigation. Therefore, the system may withhold the information not subject to section 552.022 under section 552.103 of the Government Code.²

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the system may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. The system may withhold the information we have marked under rule 192.5 of the Texas Rules of Civil Procedure. The system may withhold the information not subject to section 552.022 of the Government Code under section 552.103 of the Government Code. The system must release the remaining information.

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



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 625439

Enc. Submitted documents

c: Requestor
(w/o enclosures)