



April 20, 2016

Via CMRRR: 7012 3460 0000 0452 0040

CA Forensics, LLC
Columbus Alexander
Suite 600, The Madison
15851 Dallas Parkway
Addison, Texas 75001

RE: Public Information Request Response; CA Forensics, LLC (4/6/2016)

Dear Mr. Alexander:

This letter is in response to your public information request received by the Dallas Police & Fire Pension System ("DPFP") on April 6, 2016, in which you requested:

1. A copy of all written agreements, contracts, and/or engagement agreement letters by and between the law firm of Diamond McCarthy LLP and the Dallas Police & Fire Pension System. If none, please so state.
2. A list of all payments issued and/or accrued by the Dallas Police & Fire Pension System to the law firm of Diamond McCarthy LLP during fiscal 2015 and fiscal 2016. Please include (preferably in date ascending order), the check or payment number, payment date, and payment amount. Please note a copy of all billings by Diamond McCarthy is requested as an alternative should a list of all payments requested not be available.
3. The anticipated date for the law firm of Diamond McCarthy to provide a written report to the Dallas Police & Fire Pension System and/or its Board of Trustees re findings and conclusions noted during the course and scope of its engagement. If none anticipated, please so state.

DPFP believes that the information responsive to your request under item 1 is excepted from disclosure under the Texas Public Information Act. DPFP desires to withhold records and has requested an open records decision from the Attorney General regarding whether the information is within an exception to public disclosure.

We and/or the Attorney General will notify you once a decision from the Attorney General has been issued. A copy of our request for a decision and the public portion of the police report are enclosed. We will forward any subsequent written communications that we have with the Office of the Attorney General regarding our request.

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

April 20, 2016
Page 2 of 2

The document responsive to item 2 is enclosed with this letter. Regarding item 3, the Texas Public Information Act does not require a governmental body to prepare answers to questions. *See* Open Records Decision No. 555 at 1-2 (1990).

Very truly yours,
MESSER, ROCKEFELLER & FORT, PLLC



MARIE N. ROVIRA
ASSISTANT CITY ATTORNEY

MNR/HS
Enclosures

cc: Office of Attorney General

via CMRRR # 7012 3460 0000 0452 0033

Joshua Mond
General Counsel
Dallas Police & Fire Pension System

2:39 PM
04/15/16

Dallas Police and Fire Pension System

Check Detail

January 1, 2015 through April 15, 2016

Type	Check Number	Check Date	Name	Original Amount
Bill Pmt -Check	0108303720	02/27/2015	DIAMOND MCCARTHY LLP	9,010.62
Bill Pmt -Check	1448	10/23/2015	DIAMOND MCCARTHY LLP	125,000.00
Bill Pmt -Check	1672	02/19/2016	DIAMOND MCCARTHY LLP	37,589.46



April 20, 2016

Via CMRRR #7012 3460 0000 0452 0033

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 CA Forensics, LLC

Dear General Paxton:

This firm represents the Dallas Police & Fire Pension System ("DPFP"). DPFP received a request for information ("Request") under the Public Information Act ("Act") from CA Forensics, LLC ("Requestor"). A copy of the Request was received by DPFP on April 6, 2016, and is attached as **Exhibit 1**. **Exhibit 1** constitutes evidence of the date DPFP received the Request under section 552.301(e)(1)(C) of the Texas Government Code. Requestor seeks:

1. A copy of all written agreements, contracts, and/or engagement agreement letters by and between the law firm of Diamond McCarthy LLP and the Dallas Police & Fire Pension System. If none, please so state.
2. A list of all payments issued and/or accrued by the Dallas Police & Fire Pension System to the law firm of Diamond McCarthy LLP during fiscal 2015 and fiscal 2016. Please include (preferably in date ascending order), the check or payment number, payment date, and payment amount. Please note a copy of all billings by Diamond McCarthy is requested as an alternative should a list of all payments requested not be available.
3. The anticipated date for the law firm of Diamond McCarthy to provide a written report to the Dallas Police & Fire Pension System and/or its Board of Trustees re findings and conclusions noted during the course and scope of its engagement. If none anticipated, please so state.

DPFP released documents responsive to item 2 to the Requestor. Regarding item 3, DPFP notified the Requestor that the Act does not require a governmental body to prepare answers to questions. See Open Records Decision No. 555 at 1-2 (1990). Regarding item 1, DPFP seeks a determination from your office confirming that 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

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Frisco, TX 75034
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receives the written request for information. Accordingly, this request for a ruling made on April 20, 2016, is timely and made in accordance with section 552.301(b). DPFP 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 Request are being produced to your office with this request for a determination. The requested records DPFP claims to be exempt from public disclosure are marked as ***Exhibit 2***. Pursuant to section 552.301(d) of the Texas Government Code, a copy of this letter is being sent to the Requestor without exhibits.

Brief of Law in Support of Exceptions

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

Litigation Exception Under §552.103

DPFP contends that all of the requested records in ***Exhibit 2*** 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).

Exhibit 3 contains file stamped pleadings of the lawsuit filed between DPFP, CDK Realty Advisors, CDK Advisors, and other named individuals. ***Exhibit 3*** provides evidence the litigation exception applies to the documents in ***Exhibit 2*** because litigation was pending on the date DPFP received the Request on April 6, 2016. Additionally, the information at issue specifically

references litigation between the parties. Therefore, DPFP contends the documents in *Exhibit 2* are exempt from disclosure.

Attorney-Client Privilege under § 552.101 and § 552.107

DPFP contends that the requested records in *Exhibit 2* 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. Documents which DPFP contend contain privileged information are marked in *Exhibit 2*.

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. Feb. 26, 2015). 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.

To begin, the information contained in *Exhibit 2* was communicated between the law firm retained by DPFP, Diamond McCarthy, LLP, and DPFP authorized representatives. Second, *Exhibit 2* constitutes communications made for the purpose of facilitating the rendition of professional legal services because DPFP, through its authorized representatives, requested legal counsel to perform specified tasks and, upon review of *Exhibit 2*, you will see the details revealed by the attorney about communications with DPFP and recommended courses of action based upon the results of the tasks performed by the attorney. Diamond McCarthy, LLP conducted this analysis and has provided legal advice regarding the legal question presented. Third, the communications were confidential between the attorneys and DPFP representatives and were not intended to be disclosed. Finally, the communications have remained confidential, have not been reviewed by any other party other than DPFP and its representatives duly authorized to seek legal advice on DPFP's behalf. Privilege has not been waived by DPFP. Therefore, the communications contained in *Exhibit 2* are excepted from disclosure under Sections 552.101 and 552.107 of the Act.

In summary, 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 *Exhibit 2*, are wholly excepted from disclosure. Thank you for your consideration in this matter.

Very truly yours,
MESSER, ROCKEFELLER & FORT, PLLC



MARIE N. ROVIRA
ASSISTANT CITY ATTORNEY

MNR/HS

Enclosures: Exhibit 1 – Request
Exhibit 2 – Excepted documents
Exhibit 3 – Documents in support of litigation exception

cc: CA Forensics, LLC (without exhibits)
Columbus Alexander
Suite 600, The Madison
15851 Dallas Parkway
Addison, Texas 75001

Joshua Mond
General Counsel
Dallas Police & Fire Pension System