



MESSER * ROCKEFELLER * FORT
THE MUNICIPAL LAW FIRM

February 20, 2017

Via CMRRR #7013 1090 0000 1029 1323

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 (2.6.17 and 2.9.17)

Dear General Paxton:

This law firm represents the Dallas Police and Fire Pension System ("DPFP"). DPFP received thirty-seven requests for information (collectively "Requests") under the Public Information Act ("Act") from Julie Kobel ("Requestor"). Copies of the Requests received by DPFP on February 6, 2017 and February 9, 2017, 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:

- 1702-001 Chart of Accounts to include account number and account description for all accounts used by the System's general accounting system for recording and reporting all financial transactions.
- 1702-002 Income Statement, Detailed trial balance - transaction detail by account for the period 01/01/2016-01/31/2017 to include account number, account description, transaction type, date, number, name, memo, debit amount, credit amount, balance amount, presumably all standard categories on electronic export.
- 1702-003 Balance Sheet, Detailed trial balance - transaction detail by account for the period 01/01/2016-01/31/2017 to include account number, account description, transaction type, date, number, name, memo, debit amount, credit amount, balance amount, presumably all standard categories on electronic export
- 1702-005 CDK Realty Advisors, LP - All "Request for Production of Documents" discovery requests issued by the System, and/or its attorneys, and/or its law firms to CDK Realty Advisors, LP in the above-referenced cause-of-action.
- 1702-006 CDK Advisors, LLC - All "Request for Production of Documents" discovery requests issued by the System, and/or its attorneys, and/or its law firms to CDK Advisors, LLC in the above-referenced cause-of-action.

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- 1702-007 Kenneth Cooley - All "Request for Admissions" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Kenneth Cooley in the above-referenced cause-of-action.
- 1702-008 Kenneth Cooley - All "Request for Interrogatories" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Kenneth Cooley in the above-referenced cause-of-action.
- 1702-009 Kenneth Cooley - All "Request for Production of Documents" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Kenneth Cooley in the above-referenced cause-of-action.
- 1702-010 Kenneth Cooley - All "Notice of Intent to take Oral Deposition" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Kenneth Cooley in the above-referenced cause-of-action.
- 1702-011 Jon Donahue - All "Request for Admissions" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Jon Donahue in the above-referenced cause-of-action.
- 1702-012 Jon Donahue - All "Request for Interrogatories" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Jon Donahue in the above-referenced cause-of-action.
- 1702-013 Jon Donahue - All "Request for Production of Documents" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Jon Donahue in the above-referenced cause-of-action.
- 1702-014 Jon Donahue - All "Notice of Intent to take Oral Deposition" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Jon Donahue in the above-referenced cause-of-action.
- 1702-015 Brent Kroener - All "Request for Admissions" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Brent Kroener in the above-referenced cause-of-action.
- 1702-016 Brent Kroener - All "Request for Interrogatories" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Brent Kroener in the above-referenced cause-of-action.
- 1702-017 Brent Kroener - All "Request for Production of Documents" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Brent Kroener in the above-referenced cause-of-action.

- 1702-018 Brent Kroener - All "Notice of Intent to take Oral Deposition" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Brent Kroener in the above-referenced cause-of-action.
- 1702-019 Marshall Edwards - All "Request for Admissions" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Marshall Edvvard in the above-referenced cause-of-action.
- 1702-020 Marshall Edwards - All "Request for Interrogatories" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Marshall Edwards in the above-referenced cause-of-action.
- 1702-022 Marshall Edwards - All "Notice of Intent to take Oral Deposition" discovery requests issued by the System, and/or its attorneys, and/or its law firms to Marshall Edwards in the above-referenced cause-of-action.
- 1702-023 CDK Realty Advisors, LP - All "Request for Production of Documents" discovery requests issued by CDK Realty Advisors, LP to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-024 CDK Advisors, LLC - All "Request for Production of Documents" discovery requests issued by CDK Advisors, LLC to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-025 Kenneth Cooley - All "Request for Admissions" discovery requests issued by Kenneth Cooley to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-026 Kenneth Cooley - All "Request for Interrogatories" discovery requests issued by Kenneth Cooley to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-027 Kenneth Cooley - All "Request for Production of Documents" discovery requests issued by Kenneth Cooley to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-028 Kenneth Cooley - All "Notice of Intent to take Oral Deposition" discovery requests issued by Kenneth Cooley to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-029 Jon Donahue - All "Request for Admissions" discovery requests issued by Jon Donahue to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.

- 1702-030 Jon Donahue - All "Request for Interrogatories" discovery requests issued by Jon Donahue to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-031 Jon Donahue - All "Request for Production of Documents" discovery requests issued by Jon Donahue to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-033 Brent Kroener - All "Request for Admissions" discovery requests issued by Brent Kroener to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-034 Brent Kroener - All "Request for Interrogatories" discovery requests issued by Brent Kroener to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-035 Brent Kroener - All "Request for Production of Documents" discovery requests issued by Brent Kroener to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-036 Brent Kroener - All "Notice of Intent to take Oral Deposition" discovery requests issued by Brent Kroener to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-037 Marshall Edwards - All "Request for Admissions" discovery requests issued by Marshall Edwards to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-038 Marshall Edwards - All "Request for Interrogatories" discovery requests issued by Marshall Edwards to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-039 Marshall Edwards - All "Request for Production of Documents" discovery requests issued by Marshall Edwards to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.
- 1702-040 Marshall Edwards - All "Notice of Intent to take Oral Deposition" discovery requests issued by Marshall Edwards to the System, and/or its attorneys, and/or its law firms in the above-referenced cause-of-action.

Requestor did not submit requests 1702-004, 1702-021, or 1702-032. The Requests were numbered by the Requestor. DFPF 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 February 20, 2017, is timely and made in accordance with section 552.301(b). DFPF 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 DFPF 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.

Background information relevant to the Requests:

In early 2002, DFPF hired Columbus Alexander (“Alexander”) d/b/a CFOpros to conduct financial accounting for DFPF. The information concerning Alexander is relevant to these Requests because DFPF has good reason to believe Alexander and Requestor are closely related. **Exhibit 3**. 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 4**. 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. 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 5**. 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 6**. In response to these requests, the DFPF sent Alexander notification on May 23, 2016, he was in violation of the settlement agreement. **Exhibit 7**. In response to this notification, Alexander withdrew all outstanding requests on May 27, 2016. **Exhibit 8**.

Then on June 1, June 6, June 8, and June 10, 2016, Requestor submitted four requests to DFPF. **Exhibit 9**. DFPF responded to the June 1 request with a cost estimate letter. 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 10**. DFPF has reason to believe that Requestor has a close relationship with Alexander based on the information contained in **Exhibit 3**, 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 11**.

Subsequently on June 17, 2016, Requestor submitted twenty requests. DFPF requested a ruling in **OAG ID # OR2016-20208**. 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**

12. Since filing suit, the Requestor has filed the thirty-five Requests at issue. Alexander while under full legal counsel by his attorney, agreed in the 2002 settlement agreement that he would not contact DPF. Alexander waived his legal right to request public information from DPF by entering into the settlement agreement. Alexander, himself and through the Requestor, has violated this agreement on numerous occasions. DPF notified Alexander and Requestor of these defaults prior to filing suit. In addition, Alexander and Requestor have left DPF 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

DPF 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. The requested records also contain information concerning individual plan members under section 552.0038. If DPF is required to release the requested information, DPF will first redact the information covered by section 552.0038.

Confidential Information by Law under § 552.101

DPF asserts that **Exhibit 2** in its entirety is 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, DPF contends the information sought by the Requests is confidential under 552.101 in conjunction with the 2002 settlement agreement.

Litigation Exception Under § 552.103

DPF 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).

As previously explained and evidenced in ***Exhibit 12***, litigation commenced on June 23, 2016. 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 DFPF has filed litigation against Alexander. Therefore, DFPF contends the information in ***Exhibit 2*** is confidential under section 552.103 regardless of whether the information is public under section 552.022, because the Requestor is obtaining information for Mr. Alexander who waived his right to make public information requests by entering the 2002 settlement agreement.

In summary, the DFPF 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 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/BM

Enclosures: Exhibits 1-12

cc: Julie Kobel

via email: julie.kobel@dpfps.org

Joshua Mond
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Dallas Police and Fire Pension System