

Mayor and Council Communication

DATE: 10/11/22

M&C FILE NUMBER: M&C 22-0822

LOG NAME: 12PIA LAWSUIT 2022

SUBJECT

(ALL) Adopt Resolution Ratifying the City's Lawsuit Entitled City of Fort Worth, Texas v. Ken Paxton, Attorney General, Cause No. D-1-GN-22-003849 Pursuant to Chapter 552 of the Texas Government Code

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution ratifying the filing of the lawsuit entitled City of Fort Worth, Texas v. Ken Paxton, Attorney General of Texas Cause No. D-1-GN-22-003849.

DISCUSSION:

On May 13, 2022, the City received a public information request (CFW Open Records Request R004436-051322) that sought the release of information that the City believes to be confidential under Section 552.101 of the Texas Government Code in conjunction with Rule 192.5 of the Texas Rules of Civil Procedure, Section 552.111 of the Texas Government Code, and Section 552.103 of the Texas Government Code. The requestor sought specific documentation, including case files, notes, videos, and photographs regarding an incident that involved the death of a City of Fort Worth employee.

The City submitted a brief to the Attorney General arguing that a portion of the information requested was confidential under section 552.101 of the Texas Government Code in conjunction with Rule 192.5 of the Texas Rules of Civil Procedure, section 552.111 of the Texas Government Code, and section 552.103 of the Texas Government Code. Specifically, the City argued that the information is attorney work product that contains the mental impressions, opinions, or conclusions of the City's expert that were created in anticipation of litigation while performing the investigation as the representative of the Fort Worth City Attorney's Office. The Attorney General ruled that the information is not protected under section 552.101 of the Texas Government Code in conjunction with Rule 192.5 of the Texas Rules of Civil Procedure because the City did not demonstrate the applicability of the attorney work product privilege to the information at issue, and therefore, the City must release the requested information. The Attorney General also ruled that the City could not withhold the submitted information under section 552.111 of the Texas Government Code and section 552.103 of the Texas Government Code because these are discretionary exceptions to disclosure and does not make the information confidential under the Public Information Act, and thus, the records are subject to release under section 552.022(a)(1) of the Texas Government Code.

In order to preserve the City's right to withhold confidential information under Rule 192.5 of the Texas Rules of Civil Procedure, Section 552.111 of the Texas Government Code, and Section 552.103 of the Texas Government Code, the City's only recourse is to file suit against the Attorney General seeking a judicial ruling on this matter.

Because of additional deadlines set forth in the Texas Public Information Act, the City Attorney's Office proceeded to file suit against the Attorney General on August 19, 2022. Due to the City Council's meeting calendar for the month of August, it was not possible to seek City Council action on this matter prior to that date. As a result, the City Attorney now seeks ratification by the City Council of this action.

This M&C does not request approval of a contract with a business entity.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that approval of this recommendation will have no material effect on City funds.

Originating Business Unit Head:

Laetitia Brown 6639

Additional Information Contact:

Leann Guzman 8973

Steve Cumbie 6799

Expedited