

Mayor and Council Communication

DATE: 09/27/22

M&C FILE NUMBER: M&C 22-0744

LOG NAME: 12PIALAWSUIT2022EVERLY

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-22-003670 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-22-003670.

DISCUSSION:

On May 5, 2022, the City received a public information request (CFW Open Records Request R004261-050422) 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 and Section 552.111 of the Texas Government Code. The requestor sought specific documentation, including her personnel file and any supporting records, recordings, or findings pertaining to the Human Resources investigation in which a City employee had various allegations against her.

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, and section 552.111 of the Texas Government Code. Specifically, the City argued that the information is attorney work product that contains the mental impressions of the City's Human Resources Employee and Labor Relations Division investigator that were created in anticipation of litigation. 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 that the information at issue constitutes 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, 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 because this is a discretionary exception to disclosure and does not make information confidential under the Public Information Act, and thus, the records are subject to release under section 552.022(a)(1).

In order to preserve the City's right to withhold confidential information under Rule 192.5 of the Texas Rules of Civil Procedure and Section 552.111 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 11, 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.

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 the above recommendation will have no material effect on City funds.

Submitted for City Manager's Office by: ALL ACMS 6222

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