



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 3, 2019

Mr. David T. Ritter
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2019-24460

Dear Mr. Ritter:

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# 783632 (Reference No. G11770).

The City of McKinney (the "city"), which you represent, received a request for (1) information pertaining to a specified agreement between the city and a named law firm, (2) information reflecting the amount paid by the city to the named firm during a specified time period, (3) information reflecting the amount paid to the named law firm by the city for specified litigation, and (4) information pertaining to a specified category of insurance policy held by the named law firm. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We also received comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, you state the city does not have some of the requested information. The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). However, the requestor asserts the city possesses the information at issue. Whether the city has information responsive to a certain portion of the request is a question of fact. This office cannot resolve factual disputes in the open records process. Instead, we must rely on the

representations made to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Accordingly, we must accept the city's representation that it does not have information responsive to this part of the request. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the city made a good-faith effort to do so.

Next, you assert portions of the submitted information are not responsive to the present request. However, we note the information at issue is part of a bill relating to the amount paid by the city to the named law firm. Therefore, we find the information at issue is responsive to the instant request, and we will address your argument against its disclosure.

Next, we note 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]

...

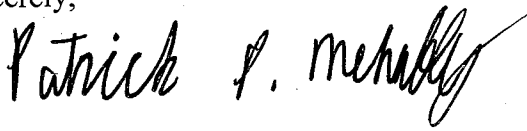
(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3), (16). Part of the submitted information consists of information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The remaining information consists of attorney fee bills subject to section 552.022(a)(16). Thus, the submitted information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the submitted information under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception and does 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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not withhold the submitted information under section 552.103 of the Government Code. As you raise no other exceptions to disclosure, the city must release the submitted 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/be

Ref: ID# 783632

Enc. Submitted documents

c: Requestor
(w/o enclosures)