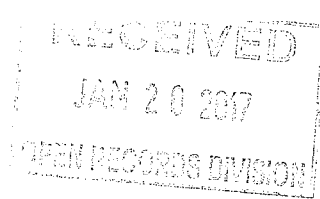




Office of the Chief Division Counsel

U.S. Department of Justice

Federal Bureau of Investigation



650354
650866

One Justice Way
J. Gordon Shanklin Building
Dallas, Texas 75220-5220
(972) 559-5000

January 17, 2017

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request by the Dallas Police and Fire Pension System for an exception to disclosure requirements under the Public Information Act.

Your office recently received a request (attached) by counsel for the Dallas Police and Fire Pension System ("DPFPS") that an exception to disclosure requirements under the Public Information Act be applied to an open records request they received.

The purpose of this letter is to convey that the Federal Bureau of Investigation ("FBI") concurs with the request made by DPFPS and to confirm that the excepted documents speak to a current FBI investigation.

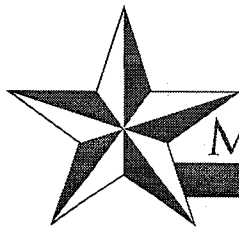
Thank you for your consideration in this matter. Please feel free to contact me directly with any follow up questions.

Sincerely,

Thomas D. Petrowski
Chief Division Counsel

c: Attorney Marie Rovira, counsel to DPFPS.

encl: DPFPS request, dated January 17, 2017.



MESSER ★ ROCKEFELLER ★ FORT
THE MUNICIPAL LAW FIRM

January 13, 2017

Via CMRRR # 7013 1090 0000 1029 1446

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 Steve Thompson (12.30.16)

Dear General Paxton:

This law firm represents the Dallas Police and Fire Pension System ("DPFP"). The DPFP received a request for information ("Request") under the Public Information Act ("Act") from Steve Thompson ("Requestor"). A copy of the Request was received by the DPFP on December 30, 2016, and is attached as *Exhibit 1. Exhibit 1* constitutes evidence of the date the DPFP received the Request under section 552.301(e)(1)(C) of the Texas Government Code. Requestor seeks:

Copies (electronic please if possible) of all letters and other correspondence from the USDOJ and/or the FBI asking for information or documents from the pension system since 2014.

The DPFP 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, with the DPFP being closed on January 2, 2017 for a holiday, this request for a ruling made on January 13, 2017, is timely and made in accordance with section 552.301(b). The 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 the 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

The DPFP contends that certain information in the requested records is exempt from disclosure based upon the Texas Government Code, Chapter 552, Sections 552.101 and 552.108.

DALLAS

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Confidential Information by Law under § 552.101

The DFPF asserts that *Exhibit 2* in their entirety are 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.” This section encompasses information protected by other statutes. Rule 6(e) of the Federal Rules of Criminal Procedure provides:

(2) Secrecy.

- (A) No obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B).
- (B) Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury:
 - (i) a grand juror;
 - (ii) an interpreter;
 - (iii) a court reporter;
 - (iv) an operator of a recording device;
 - (v) a person who transcribes recorded testimony;
 - (vi) an attorney for the government; or
 - (vii) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).

...

(3) Exceptions.

...

- (E) The court may authorize disclosure--at a time, in a manner, and subject to any other conditions that it directs--of a grand-jury matter:
 - (i) preliminarily to or in connection with a judicial proceeding;
 - (ii) at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury;
 - (iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation;
 - (iv) at the request of the government if it shows that the matter may disclose a violation of State, Indian tribal, or foreign criminal law, as long as the disclosure is to an appropriate state, state-subdivision, Indian tribal, or foreign government official for the purpose of enforcing that law; or
 - (v) at the request of the government if it shows that the matter may disclose a violation of military criminal law under the Uniform Code of Military Justice, as long as the disclosure is to an appropriate military official for the purpose of enforcing that law.
- (F) A petition to disclose a grand-jury matter under Rule 6(e)(3)(E)(i) must be filed in the district where the grand jury convened. Unless the hearing is ex parte--as it may be when the government is the petitioner--the petitioner must serve the petition on, and the court must afford a reasonable opportunity to appear and be heard to:
 - (i) an attorney for the government;
 - (ii) the parties to the judicial proceeding; and
 - (iii) any other person whom the court may designate.

Fed. R. Crim. P. 6(e). The matter referenced in the responsive documents is pending before a federal grand jury. Rule 6 of the Federal Rules of Criminal Procedure is instructive that only a court may authorize the disclosure of a grand jury matter. Therefore, the DPFP contends the information contained in *Exhibit 2* is confidential under 552.101 in conjunction with Rule 6(e) of the Federal Rules of Criminal Procedure.

Law Enforcement Exception Under § 552.108(a)(1) and (b)(1)

The DPFP contends that certain information in the requested record is exempt from disclosure under Texas Government Code, section 552.108, also known as the law enforcement exception. Section 552.108(a)(1) provides as follows:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of section 552.021 if release of the information would interfere with the detection, investigation, or prosecution of crime.

Further, Section 552.108(b)(1) provides:

An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of section 552.021 if the release of the internal record or notation would interfere with law enforcement or prosecution.

The requested document or record contains information pertaining to a pending federal investigation and prosecution. This matter is currently pending before a federal grand jury. The DPFP contends that the release of such information while the investigation and prosecution are pending would unduly interfere with law enforcement. The DPFP argues that investigative strategies may be revealed, witnesses may be unwilling to speak for fear of retaliation, and confidential information may be revealed, if the requested records are disclosed. Therefore, the DPFP requests a determination that *Exhibit 2* is exempt from public disclosure.

In summary, the 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 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 DALLAS POLICE AND FIRE
PENSION SYSTEM

January 13, 2017

Page 4 of 4

MNR/BM

Enclosures (attached hereto): Exhibit 1 – Request

Exhibit 2 – Excepted documents

cc: Steve Thompson *via email: stevethompson@dallasnews.com*

Joshua Mond
General Counsel
Dallas Police and Fire Pension System