

OLSON & OLSON^{LLP}
ATTORNEYS AT LAW

April 4, 2019

Oto Cantu, Requestor

VIA E-MAIL: OTOCANTU@AOL.COM

RE: Public Information Request December 31, 2018
Requestor: **Oto Cantu**
Reference: COK18-010

Dear Mr. Cantu:

This letter is in response to your public information request to City of Katy, Texas (the "City"). The City contended that the information you requested is excepted from public disclosure under the Texas Government Code, Chapter 552, and that such information may be withheld. Because the City asserted that the information requested is excepted from disclosure, the City submitted a request for a decision from the Texas Attorney General in accordance with Section 552.301 of the Government Code. The Attorney General has determined that a portion of the information must be withheld under Sections 552.103(a) and 552.107(1) of the Government Code. The remaining information that is subject to disclosure is attached hereto. A copy of the Attorney General's decision is also attached.

If you should require more information, please do not hesitate to contact me.

Very truly yours

OLSON & OLSON, L.L.P.



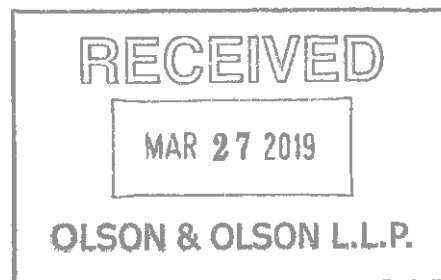
Eric C. Farrar

EF/lw
enclosure

cc.: Art Pertile, III, City Attorney	<u>VIA E-MAIL</u>
Missy Bunch, City Secretary	<u>VIA E-MAIL</u>
Becky McGrew, Assistant City Secretary	<u>VIA E-MAIL</u>
Mandy Roberson, Records Specialist	<u>VIA E-MAIL</u>



KEN PAXTON
ATTORNEY GENERAL OF TEXAS



March 25, 2019

Mr. Eric C. Farrar
Counsel to the City of Katy
Olson & Olson, LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2019-08162

Dear Mr. Farrar:

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# 756108 (Reference No. COK18-010).

The City of Katy (the "city"), which you represent, received a request for twelve categories of information pertaining to a named former city employee. You state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted representative sample of information.²

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The information in Exhibit 3 consists of a completed investigation subject to section 552.022(a)(1). This information must be released unless it is excepted from disclosure under section 552.108 of the Government Code, or is made confidential under the Act or other law. *See id.* You seek to withhold the information at issue under sections 552.101 and 552.107 of the Government Code. However, section 552.107 is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions).* Therefore, the city may not withhold any of the information subject to section 552.022(a) under section 552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for the purposes of section 552.022(a). *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the information subject to section 552.022(a)(1) of the Government Code. Additionally, as section 552.101 of the Government Code makes information confidential under the Act, we will consider the applicability of this exception for the information subject to section 552.022(a)(1). We will also address your arguments for the information not subject to section 552.022(a)(1) of the Government Code.

Section 552.103 of the Government Code provides, in part:

(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 a 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 employec 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). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was 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, orig. proceeding); *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). See ORD 551.

You claim Exhibit 4 is related to pending litigation against the city. You state, and the submitted information reveals, prior to the city's receipt of the instant request, a lawsuit styled *Galvez v. City of Katy et al.*, Cause No. 2018-67325, was filed and is currently pending against the city in the 189th Judicial District Court of Harris County, Texas. Therefore, we agree litigation was pending on the date the city received the present request for information. You also state the information at issue is related to the pending lawsuit. Based upon these representations and our review, we find the information at issue is related to the pending litigation. Accordingly, the city may withhold Exhibit 4 under section 552.103(a) of the Government Code.³

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 at 3 (1982).

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. See ORD 676 at 6-7. First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the

³As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state Exhibit 2 consists of communications between attorneys for the city, their authorized representatives, and city employees in their capacity as clients. You explain the information at issue was made for the purpose of providing professional legal services to the city, and this information has remained confidential. Based upon your representations and our review, we find you demonstrated the applicability of the attorney-client privilege to Exhibit 2. Accordingly, the city may withhold Exhibit 2 under section 552.107(1) of the Government Code.⁴

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides the following:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client’s representative and the client’s lawyer or the lawyer’s representative;

(B) between the client’s lawyer and the lawyer’s representative;

⁴As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie*, 922 S.W.2d at 923 (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information). We note communications with third parties with whom a governmental entity shares a privity of interest are protected. Open Records Decision Nos. 464 (1987), 429 (1985).

You claim Exhibit 3 is protected by the attorney-client privilege. However, you state Exhibit 3 was shared with a non-privileged party. Thus, we find you failed to demonstrate the applicability of the attorney-client privilege to the information at issue. Therefore, the city may not withhold Exhibit 3 on the basis of the attorney-client privilege in rule 503 of the Texas Rules of Evidence.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing

by the Texas Supreme Court are delineated in *Industrial Foundation, Id.* at 683. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. See *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied). (mem. op.). Upon review, we find you failed to demonstrate any portion of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city may withhold Exhibit 4 under section 552.103(a) of the Government Code. The city may withhold Exhibit 2 under section 552.107(1) of the Government Code. The city must release the remaining 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 756108

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Employee Change of Status Report

Please enter the following change(s) as of 12-01-13

Name Galvez, Maria

Payroll No. 01-3761 Employee S.S. No. _____
FROM _____

Job	Department	Rate
Compliance Officer Range 12, Step D	220 Fire	\$2,364 semi-monthly
TO		

Job	Department	Rate
Assistant Emergency Manager Coordinator Range 12, Step E	Fire Department 220	\$2,438 Semi-monthly

REASON FOR CHANGE


- | | | |
|--|--|--|
| <input type="checkbox"/> Hired
<input type="checkbox"/> Re-hired
<input type="checkbox"/> Promotion
<input type="checkbox"/> Demotion | <input type="checkbox"/> Transfer
<input type="checkbox"/> Merit Increase
<input type="checkbox"/> Length of Service Increase
<input checked="" type="checkbox"/> Re-evaluation of Existing Job | <input type="checkbox"/> Resignation
<input type="checkbox"/> Retirement
<input type="checkbox"/> Layoff
<input type="checkbox"/> Discharge |
|--|--|--|

Leave of Absence to _____ Date

Other reason or explanation Reorganization of Fire Department Ordinance #2604-27 day work period

For full time Fire Fighters with a max work hours standard of 204 hours.

Authorized By:  Approved By: 

Human Resources: 

Original: Payroll
Copy: HR

Katy EMS Background Check Consent Form

The Katy EMS is conducting a Background Check for all potential employees and volunteers. We are not anticipating any problems but we are committed to maintaining a quality and safe environment for all our patrons.

ALL APPLICATIONS AND RESULTS WILL REMAIN CONFIDENTIAL

Please print or type all information.

FULL NAME: Galvez Maria Theresa
(Last) (First) (Middle)

OTHER NAMES USED (nicknames, maiden, etc.) Horn

ADDRESS: 6015 Fourth St. Katy Texas 77493
Street City St Zip

BIRTHDATE: _____ PHONE # 281 991 5570

DRIVERS LICENSE # _____ STATE _____

List ALL state(s) lived in since age 18 and approximate dates of each residency:

Only Texas _____

I understand that by signing this form I give the City of Katy permission to perform a background check including but not limited to Criminal History.

M Galvez
Applicant's Signature

_____ Date

Witness's Signature

_____ Date

Have you completed a Background Check Consent form for City of Katy in the past?

YES

NO

Robert S. Hauck
1820 S. Cherry Street
Tomball, TX 77375
(832) 922-3377
roberthauck@mac.com

January 8, 2018

Leah Hayes, City Attorney
Olson & Olson LLP
1906 Avenue D, Suite 300
Katy, TX 77493

Re: City of Katy Investigation

Dear Ms. Hayes:

This investigation focused on alleged misconduct raised by Maria Galvez, Emergency Management Coordinator. The allegations relate to 1) equal pay discrimination, a general allegation made against various City staff over the past few years; and 2) hostile work environment specifically directed at Russell Wilson, Fire Chief. The investigative scope was limited to these areas based on our initial and follow-up discussions.

I have conducted approximately 15-hours of face-to-face interviews with the following members of City staff, and have reviewed significant documentation provided to me during these interviews:

- Maria Galvez, Emergency Management Coordinator
- Russell Wilson, Fire Chief
- Angelina Treadway, Human Resources Director
- Laura Wylie, Administrative Assistant
- Rachel Garcia, Human Resources Generalist
- Kenneth Parker, Assistant Fire Chief
- Dana Massey, Assistant Fire Chief

After completing the aforementioned interviews and document review, I do not believe any misconduct has occurred, as it relates to equal pay discrimination or hostile work environment. I do not believe additional interviews, or further investigation is necessary.

Note: During this investigation I obtained evidence suggesting that Maria Galvez falsified payroll records and was compensated for work she did not perform. Therefore, it is my recommendation that a separate administrative investigation be initiated to specifically address this issue.

- October 2016, Job title remained as Emergency Management Coordinator, but Range/Step was increased to 12.J, and ~~pay was increased by nine (9%) percent.~~

Note: The aforementioned letter from the Mayor stated the increase was 3%. That was an error, as the actual increase was 9%. The dollar amount shown for salary ranges, and current salary are correct.

- October 2017, Job title remained as Emergency Management Coordinator. Range/Step system was changed to "Pay Grade," with EMC being identified as "28." ~~Pay was increased by two (2%) percent.~~

During the six-year span (October 2011 to October 2017), Maria Galvez has received eight pay raises, totaling 30%. She has always been paid within the Range/Step or Pay Grade associated with her job title. Her current Pay Grade 28, has a pay range of \$84,949 - \$97,422, and she is being paid at a base rate of \$89,156, which is nearly seven (7%) percent above the beginning of the range.

During my interview with Treadway, she explained that Public Sector Consultants conducted a formal salary survey, which included job analysis and job description reviews/revisions. This was a year-long process that resulted in the move from Range/Step to the Pay Grade number system, Job Description revisions, and pay adjustments.³

Russell Wilson: Wilson stated that Galvez brought up the issue of pay fairly regularly. Regarding October 1, 2016, meeting that involved Galvez and Treadway, Wilson stated that Galvez was upset about her raise (which was a 9% increase), because she felt she should be paid more, saying that EMCs in other cities and counties were making more than her. She based this on her personal polling of other EMCs she knew, with nothing supporting her assertion, such as a comparison of city/county size, or the experience/education of other EMCs.

Additionally, Wilson supported Galvez' claim that she spoke with him about certification pay, but he never made her any promises, instead he spoke about continuing formal and job related education and training as a means of being able to even consider certification pay. Wilson went on to point out that the two courses Galvez referred to in her interview (FEMA and Texas Emergency Manager Course) are referenced in her job description as "License and Certification Requirements," not something that would merit additional certification pay.⁴ Even if these courses could be considered for certification pay increases, Galvez has still not completed the Texas Emergency Manager Course.

Based on my interviews and review of the associated addenda items, I do not believe there is any merit in Maria Galvez' claim of equal pay discrimination. The records clearly

³ Public Sector Personnel Consultants, External Competitiveness Comparisons. (Addenda Item No. 3a-b)

⁴ Emergency Management Coordinator Job Description, dated August 2016. (Addenda Item Nos. 4a-b)

show that she has always been paid commensurate to her Range/Step or Pay Grade, and she has received numerous pay raises during the time she has been employed by the City of Katy.

Also compelling, are the actions of Angelina Treadway, who as a new HR Director in the public sector, reached out to fellow HR Directors in an attempt to determine if City of Katy pay ranges were consistent with other cities. She followed this up with a year-long salary survey conducted by an outside consulting firm.

It is clear that Maria Galvez believes she should be paid more, but that does not constitute discrimination. The City of Katy appropriately places value on employment positions by placing them into pay grades, and the evidence is indisputable that Galvez is being paid within the pay grade associated with her job description.

HOSTILE WORK ENVIRONMENT

Maria Galvez explained that she had not been written up, or verbally counseled, during her prior 15 years of service with the City of Katy, however, since May 2017, she has been written up three times by Chief Wilson. She feels that none of the write ups have been for failure to do her job duties. Galvez feels Chief Wilson has created a hostile work environment through his unreasonable demeanor, cruel nature, and his complete indifference toward her. Galvez went on to say that Chief Wilson treats her different, because other staff members have not been written up; other command staff members have not been required to have project planning meetings; Galvez was not listed in the SAFER Grant; she has not received promotion pay; and her position is not listed in the Fire Department Succession Plan.

Chief Wilson stated that immediately upon his joining the Katy Fire Department, in May 2016, he began to assess staff member experience and performance, organizational culture, and the quality of operations. He provided examples of management and leadership assessments he has been working on with the assistance of The Management Connection, a consulting firm used by the City prior to his arrival. Chief Wilson also spoke about the regular command staff meetings (typically weekly) that all of his command staff participates in, and he described the Personal Improvement Plans that Maria Galvez and Rick Payne were placed on after consultation with Joe Gonzalez, The Management Connection.

Chief Wilson explained the issue surrounding his written reprimands, which were all associated with work-related attendance and/or performance issues on the part of Maria Galvez. All incidences are supported by not only proper documentation, but the circumstances reported are factual, not conclusionary, and also supported by the statements of Galvez.

Finally, no one interviewed during this investigation described any actions by Chief Wilson as rude, inappropriate, or hostile in nature. There were terms such as "firm, no nonsense, demanding," etc. that were used, but not a single person, save for Maria Galvez, characterized anything Chief Wilson did, or said, as hostile in nature.

María Galvez: On September 18, 2017, Galvez submitted a letter to Angelina Tredway, Human Resources Department.⁵ In the letter she detailed her allegations of Hostile Work Environment, and Equal Pay Discrimination. She included copies of the following items with her letter:

- Written Counseling document and her response.⁶
- Memo from Chief Wilson regarding August 31, 2017, incident.⁷
- Memo from Chief Wilson regarding September 5, 2017, incident.⁸
- Emails between María Galvez and Rodney Reed, Harris County Fire Marshal's Office.⁹
- Notes from Project Planning Meeting between Galvez and Wilson.¹⁰
- Emails between María Galvez and Kevin Starbuck, Emergency Management Association of Texas.¹¹
- Letter and certificate from FEMA Emergency Management Institute.¹²
- Fire Department Succession Planning.¹³

During my interview with Galvez, we discuss each of the aforementioned items, which she felt supported her claims. Much of our discussion focused on the fact that Galvez had not been previously reprimanded during her 15 years with the City of Katy, until the Written Counseling document and two Memos were served on her by Chief Wilson, beginning in May 2017.

Galvez explained that she is "Old Katy," and she feels Chief Wilson is trying to get rid of her, like (in her opinion) he has done to others who were "Old Katy." I reviewed the Written Counseling document, dated May 30, 2017, relating to a May 23, 2017, incident and asked Galvez to identify anything that was not factual. She did not identify anything factually inaccurate about the document, which is consistent with her written response dated, May 31, 2107, in which she apologized to Chief Wilson for her actions. Galvez acknowledged that the issue of regular work hours and Chief Wilson's expectation of notifying him if adjustments were necessary, had been previous discussed on May 12, 2017.

Note: During my interviews with Dana Massey and Kenneth Parker, they both explained that they have regular work hours identified, and that Chief Wilson has an expectation that they call him if adjustments are necessary.

We spoke about the Memo relating to the August 31, 2017 incident, and I again asked if there were any facts in dispute. Galvez could not identify any inaccuracies, but she simply felt Chief Wilson was being overly critical and

⁵ Letter and attachments from María Galvez, dated September 18, 2017. (Addenda Item Nos. 5a-c)

⁶ Written Counseling, dated May 30, 2017, and Galvez response, dated May 31, 2017, relating to an incident that occurred on May 23, 2017. (Addenda Item Nos. 6a-b)

⁷ Memo dated September 8, 2017, regarding August 31, 2017, incident. (Addenda Item Nos. 7a-e)

⁸ Memo dated September 8, 2017, regarding September 5, 2017, incident. (Addenda Item Nos. 8a-n)

⁹ Emails between Galvez and Reed, dated September 8, 2017. (Addenda Item Nos. 9a-c)

¹⁰ Project Planning Meeting Notes, dated May 31, 2017. (Addenda Item Nos. 10a-d)

¹¹ Emails between Galvez and Starbuck, dated April 27, 2017, and July 5, 2017. (Addenda Item Nos. 11a-c)

¹² Letter & Certificate, FEMA Emergency Management Institute, dated June 8, 2017. (Addenda Item Nos. 12a-b)

¹³ Fire Department Succession Planning document, dated August 14, 2017, unsigned. (Addenda Item Nos. 13 a-m)

unreasonable. Galvez acknowledged that Chief Wilson granted her request to stay home and take care of flood issues at her home, and she further acknowledged that she was supposed to get the requested timeline information to Chief Wilson the following day – but she did not.

Additionally, we spoke about the second Memo in which Chief Wilson reprimanded Galvez for not responding timely, or properly, to his directive regarding the timeline information, and that she provide a "written and signed memo" explain why she failed to do so. Again, Galvez did not provide any disputed facts regarding the information contained in the Memo, but suggested that Chief Wilson was picking on her, because he wanted to get rid of her.

Galvez admitted that she was untimely in her response, and also that she did not provide a "written and signed memo," because she felt email was good enough. Galvez also told me she was unfamiliar with the Memo Form and didn't have access to one.

Note: During my interviews with Dana Massey, Kenneth Parker, and Laura Wylie, I specifically questioned each of them about the Memo Form, and they all responded similarly, stating it was a commonly used form in the Fire Department, and that there is a template on the Fire Department shared drive (O-drive).

Galvez showed me a copy of Project Planning Meeting notes from May 31, 2017, and told me this was something only she was being required to participate in, and other command staff were not being required to do the same.

Note: Galvez did not advise me that the reason for the one-on-one Project Planning Meetings was due to the fact that she had been placed on a Personal Improvement Plan, which I later learned about from Chief Wilson. Additionally, I learned from Kenneth Parker, that Battalion Chief Rick Payne was on a similar plan. Parker further explained that he too was having one-on-one Project Planning Meetings with Rick Payne.

Galvez pointed out the fact that she (the position of Emergency Management Coordinator) was not included in the Fire Department Succession Planning documents, as an area in which she was being treated differently than her peers, and thus adding to the hostile work environment.

Note: I reviewed the Fire Department Succession Planning documents and I did not find it appropriate to include the position of Emergency Management Coordinator, as this is not a fire department specific job. In the City of Katy, the EMC currently reports to the Fire Chief, however, during the time Maria Galvez has been either the Assistant EMC, or EMC, it had previously fallen under the Police Chief's supervision. The Fire Department plan only includes those positions related to fire prevention and fire suppression. It does not include the EMC position, or the Administrative

Assistant position, both of which are under the supervision of the Fire Chief, but neither of which are Fire Department specific jobs.

Similar to the Succession Plan, Galvez felt that because she was not listed in the SAFER Grant, and also because she was replaced by the finance director as the secondary point of contact for administration of the grant, that she was being mistreated.

Note: The SAFER Grant is a federal fire suppression grant that is not associated with the EMC position. Additionally, it is common practice for grants to have the finance director identified as one of the points of contact for grant administration and accounting.

Galvez related an incident in which she was speaking with Dana Massey about work, and Dana told her, "Don't do anything to get yourself fired. You have a target on your back."

Note: During my interview with Dana Massey, she refuted the above statement. Massey explained that Galvez was talking about how she feels, and has always felt, that administration (Mayor, City Administrator, Supervision, etc.) don't like her, and Massey said it is very probable that in response, she told Galvez something to the effect of, "Then don't put a target on your back." Massey was adamant that she never made the comment, "Don't do anything to get yourself fired. You have a target on your back."

Maria Galvez told me that she met with Rachel Garcia on May 30, 2017, and that during their discussion Rachel told her she needed to start looking for another job, because Chief Wilson had told her he was "out to get Maria."

Note: I met with Rachel Garcia and asked her about the above meeting and the statements attributed to her. Garcia clearly remembered the discussion with Maria, who was venting about her frustration with Chief Wilson, but Garcia denied ever making any comment about Chief Wilson being "out to get her," nor has Garcia ever heard Chief Wilson say any such thing.

Another example given by Galvez that she felt support of her allegations, was a meeting that occurred after she had returned from the Texas Department of Emergency Management (TDEM) Conference. Galvez explained how she, Chief Wilson, Massey, Parker, and Wylie were together in a meeting. During the meeting, Chief Wilson began asking Galvez to advise the group of the classes she attended during the conference, and what she learned at each one. She said he made her explain each course, hour by hour, and she felt this was humiliating, rude, and demeaning. She also said that Chief Wilson did not do this with anyone else.

Note: I interviewed Massey, Parker, and Wylie, regarding this meeting. Massey explained how prior to Galvez going to the TDEM Conference, Chief Wilson had advise the command staff that he expected a close review of all training to ensure that it was justifiable, and that upon their return from approved training all employees would be expected to brief others on the training, what they learned from it, and how it will help the fire department. Parker and Wylie supported this, and all three of them said this has become commonplace within the department.

Regarding Chief Wilson's conduct and demeanor during the meeting each of them said he was not rude or demeaning toward Galvez. Wylie described Chief Wilson's questioning of Galvez, as somewhat "interrogation-like," and she could see how Galvez might have felt somewhat humiliated, but Wylie further stated that because of Galvez' performance issues, Chief Wilson was attempting to confirm she had actually gone to the classes. Additionally, Wylie said if it was other fire personnel, she feels it would have been similar. Massey and Parker did not feel the tone or manner of questioning was humiliating toward Galvez, but simply a byproduct of the practice of verifying the value of training, the justification for training, and to ensure training is shared as a means of bettering the department.

Russell Wilson: Prior to my interview with Chief Wilson, I spoke with him on the telephone and asked that he gather any information he thought would be of value in my review of the allegation made by Maria Galvez. Specifically, I asked that he provide me with all documentation he had regarding the Written Counseling document, the two Memos he had served on Galvez, and any supporting information related to attendance, performance, or conduct on the part of Maria Galvez. This was necessary to assess the appropriateness of the corrective documentation prepared by Chief Wilson, and also to evaluate Galvez' claim that, "Not one write up is for failure to do my duty or job duties for the city."

Upon my meeting with Chief Wilson, he provided me with a detailed Memo, dated November 9, 2017, and with it he included 24 Exhibits.¹⁴ We reviewed the Memo and each of the exhibits, which fully explain the process he has gone through to develop his employees, specifically Maria Galvez, and professionalize the Katy Fire Department. He has comprehensive documentation showing the thoughtful manner in which he took time (in Galvez' case a year) to evaluate personnel, culture, and competencies of the organization. Chief Wilson did not do this in a vacuum, but instead he enlisted the help of an outside consulting firm (The Management Connection).

The documentation provided by Chief Wilson depicts an environment of inclusion and equitable treatment of his command staff, and it further shows a very intentional effort to share information within all ranks of the fire department. Chief Wilson's documentation included additional information not provided by Galvez

¹⁴ Memo and exhibits from Chief Wilson, dated November 9, 2017. (Addenda Item No14, Exhibits A-X)

such as previous document incidences of verbal counseling, and a copy of the Personal Improvement Plan/Goal Planning Sheet prepared for Galvez with the help of personnel from The Management Connection. All corrective documentation I reviewed, related directly to job performance issues and duties associated with Galvez' position as EMC.

Laura Wylie: She confirmed that as the Administrative Assistant, she sits in on all command staff meetings and prepares notes that, after review by Chief Wilson, are distributed department-wide. Wylie explained that this is a regular meeting (typically weekly) that includes all command staff, and each individual is responsible for providing updates on the following types of information:

- Tasks
- Projects
- Vehicles
- Status of due dates
- Training
- Management issues

She explained that Chief Wilson has high, but realistic, expectations. She went on to describe him as respectful, and she has never seen him do anything she would describe as creating a hostile work environment.

When I asked Wylie about her relationship with Maria Galvez, she said, "I love her, she knows everything about Katy, and I wouldn't have been successful without her." When I asked Wylie how Chief Wilson treats Galvez compared to everyone else, she said "he treats her very similar, no different than the rest of us," but she went on to say that Maria does not meet his expectations. Galvez is not getting her tasks done, and she is gone a lot. Wylie said she has seen very few times in which Galvez was in the office an entire week, which hurts her productivity, and she also feels Galvez does not prioritize well. Wylie explained that Galvez is not unique, because she has seen the same demands by Chief Wilson for Massey, Parker, and others, as it relates to his expectations.

Wylie was aware the Chief Wilson met with staff from The Management Connection, who assisted him with the preparation of Personal Improvement Plans for Maria Galvez and Rick Payne. She also confirmed that she sat in on the one-on-one meetings with Chief Wilson and Maria Galvez, and also the meetings with Kenneth Parker and Rick Payne, and recorded the notes for these Project Planning Meetings. During the meetings with Chief Wilson and Galvez, they would discuss the status of projects, and Chief Wilson would allow Galvez to set the timelines, but she would still miss them.

Wylie described her assessment of the situation, by explaining how the culture within the fire department prior to Chief Wilson was very casual and that the previous chief didn't really know what was going on. She said people were in positions without the appropriate training, education, and skills. Wylie said, "It is unbelievable to me that previous expectations were so low!"

Chief Wilson expected much more from what is now a career fire department, and no longer a volunteer fire department. Wylie said Galvez is from a past generation, and she is not fitting in well with the professional model. Wylie went on to explain that she feels, "Maria is lucky she got her job without the proper experience, training, and skills." Wylie feels Maria is resisting change because it will require more work, time, and effort on her part.

Kenneth Parker: During my meeting with Parker he confirmed that he had managed a Personal Improvement Plan with Rick Payne, and that Wylie did sit in on those meeting and take notes regarding project status, tasks being completed, etc. He also described the weekly command staff meetings very similarly to others, and he explained how he, along with the other command staff members, were required to give updates, meet due dates, and report on tasks.

Parker described his relationship with Galvez as a good professional working relationship. Parker said he is aware that Galvez is out of the office quite a bit and that during Hurricane Harvey she struggled a great deal. He explained that Galvez appeared to be overwhelmed, and that she didn't seem to know how to make requests for state assets.

Dana Massey: She described the culture and environment of the fire department as, "100 percent better since Chief Wilson arrived." The organization is being professionalized, training is improving, and it is very transparent. Massey also described the command staff meetings very similarly to Wilson, Parker, and Wylie, stating that at times Chief Wilson will impose dates, but most of the time he allows the command staff to self-impose them, as long as they are getting things done.

Massey described her relationship with Maria as good. She said there were times in the past where it was a bit contentious, but it has been good since 2015, after a firefighter died at the fire station.

Massey told me that her relationship with Chief Wilson is very good, and in her opinion he is open, honest, and loyal. She feels he is doing the right things for the Katy Fire Department. Massey said Chief Wilson is intentionally developing leaders, and she is growing under his leadership.

Massey said everyone is held to the same standard, and she has never seen Chief Wilson be rude, humiliating, or demeaning toward Galvez or anyone else. Massey also said she has never seen Chief Wilson do anything she would describe as creating a hostile work environment.

Based on my interviews and review of the associated addenda items, I do not believe there is any merit in Maria Galvez' claim of hostile work environment. The documentation completed by Chief Wilson is undisputed. Maria Galvez does not like the fact that Chief Wilson took corrective action, it is supported by facts, and all of the documentation relates directly to attendance and/or work performance.

Chief Wilson appears to be equitable in his treatment of employees, as evidenced by the Personal Improvement Plans involving Galvez and Payne, instead of what Galvez

described as her being singled out as the only person being treated in this manner. No other employee interviewed describes Chief Wilson's actions toward Maria (or anyone else) as rude, or demeaning, and no one characterizes any of Wilson's actions as hostile in nature.

The questioning about the training conference that Galvez described as rude, demeaning, and humiliating, was not anything like her version, nor does the evidence support her assertion that it is only her. This has become commonplace within the fire department. Finally, the statement Galvez attributed to Massey and Garcia were refuted by each of them.

It is apparent that Maria Galvez has an alternate view of herself as it relates to how much she is paid and how she is treated. While using terms such as untruthful or dishonest, are probably too strong as they relate to the pay and harassment allegations raised by Galvez, it is my belief that a clear lack of candor exists on the part of Galvez.

Chief Wilson took his time to assess the people and the organization. He utilized the services of an outside consulting firm to assist in his efforts to develop his employees. Chief Wilson has identified deficiencies on the part of Galvez in the areas of attendance and performance. Chief Wilson began to document these deficiencies, none of which are refuted by Galvez, and instead of correcting her attendance and performance issues, she made two meritless claims, in an effort to insulate herself from further disciplinary action.

Finally, it appears that what Galvez describes as "Old Katy," is simply incongruent with the expectation of Chief Wilson as he attempts to raise the level of leadership, professionalism, and service within the Katy Fire Department.

My conclusions are based on the aforementioned interviews and a review of documents available to me at this time. Therefore, I reserve the right to amend my report based on additional information that may become available to me in the future.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 8, 2018, in Tomball, Texas.


Robert S. Hauck