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CITY ATTORNEY

REPORT NO. R 22-0315
SEP 08 2022

REPORT RE:

REIMBURSEMENT OF ATTORNEY FEES RELATED TO INTERVIEWS

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

It is respectfully recommended that the City Council authorize the payment of \$34,674.73 in attorney fees incurred by DCA Richard Tom ("employee") in connection with an interview requested by the Department of Justice, United States Attorney's Office (DOJ) as part of its on-going investigations.

Background

DOJ requested the employee agree to be interviewed as to events surrounding the PriceWaterhouseCooper (PwC) billing system failure in 2015 and the related litigation. The interview directly related to work the employee performed in the course and scope of his employment for the City. The employee voluntarily agreed to be interviewed.

The employee retained private counsel with relevant expertise and experience to prepare him for and represent him in the interview. The City Attorney's Office did not represent the employee because, prior to the completion of the DOJ interview, it was possible the employee and the City might not have aligned interests. The private attorney has not had any contact from DOJ for more than one year, and we do not anticipate further involvement in this matter by the employee who is a witness in DOJ's investigations.

The employee has requested in writing that the City pay for the costs of his legal representation.

Analysis

As it has done for other employees who have voluntarily agreed to interviews as part of criminal investigations, the City Council, subject to approval by the Mayor, may, but is not obligated to, reimburse the employee for some or all of the costs of legal representation. Under Government Code section 995.9, “[t]he decision of the public entity to defend or indemnify or defend and indemnify such a witness shall rest within the sound discretion of the public entity and may be based on any relevant factors, including, but not limited to, whether the provision of defense or indemnity would serve the public interest.”

The subject matter of the employee’s interview was work he performed for the City, and nothing at this time indicates that the employee acted outside the scope of his employment, with malice, or in bad faith. The employee voluntarily agreeing to the interview was in the best interest of the City, which seeks to facilitate and cooperate with the DOJ in its investigations.

The costs the employee incurred in connection with his interview were reasonable. The representation required the assistance of the attorney he retained to become familiar with and understand both the events surrounding the PwC billing failure and the employee’s role relating to those events. This required the attorney to review tens of thousands of pages documents and other background information regarding the facts surrounding the investigation, including, for example, the report of the independent investigation conducted by Ellen Pansky, deposition transcripts and exhibits, emails, and other numerous and voluminous documents related to the class-action litigation.

Based on the City Attorney’s review of its invoices, the attorney provided efficient legal services and representation to the employee, and billed his time efficiently. Overall, the attorney spent a total of 62.96 hours in this representation and billed a total of \$34,674.73.

Recommendation

In light of the forgoing, the City Attorney’s Office recommends:

(1) The City Attorney be authorized to draw a demand from Fund No. 100, Department No. 12 – City Attorney, Account No. 004200 – Litigation Expenses as follows: Richard Tom in the amount of \$34,674.73.

(2) The City Attorney is requested to condition payment of these fees such that, should it later be determined that Mr. Tom acted with malice, in bad

faith, or outside the course and scope of his employment in matters related to the subject of the DOJ's interview, then Mr. Tom will be required to repay the City with interest, and such monies owed in repayment shall be considered a personal debt subject to collection.

(4) The City Attorney is authorized to make any technical corrections to these instructions to accomplish the purpose of the actions recommended in this report.

If you have any questions regarding this matter, please contact the undersigned at (213) 978-8100.

Sincerely,

MICHAEL N. FEUER, City Attorney

By


STREFAN FAUBLE
Assistant City Attorney

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