



September 6, 2000

Ms. Paula A. Jones
General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2000-3448

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138742.

The Employees Retirement System of Texas (the "ERS") received a request for "ANY APPROVALS of disability retirement benefits commencing at a date later than the date of the request, subject to editing of names and identities to comply with privacy, but not to the relevant issue of precedent." You state that although the ERS has responded to the requestor by asking for clarification of the records request, the ERS has not yet received any such clarification. Nevertheless, you explain that any records responsive to the request would necessarily have to be obtained from the records of an ERS member or annuitant under retirement plans administered by ERS. You contend that the requested information, a representative sample of which you have submitted to this office, is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 815.503(a) of the Government Code.¹

Section 552.101 of the Government Code excepts from public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Section 815.503(a) of the Government Code provides that:

Records of members and annuitants under retirement plans
administered by the retirement system that are in the custody of the system

¹In reaching our conclusion here, we assume that 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.

or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this chapter.

See also id. § 811.001(15) (defining “retirement system” as the ERS). After reviewing the submitted representative samples, we conclude that the information at issue constitutes the records of ERS members and is therefore confidential under section 815.503(a). Additionally, the requestor does not appear to be within the class of persons to whom the ERS may release this confidential information under section 815.503(b). Therefore, the ERS must withhold the requested information pursuant to section 552.101 of the Government Code.²

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

²Because we resolve your request under section 815.503 of the Government Code, we need not address your other arguments for non-disclosure.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AM/RWP/ljp

Ref: ID# 138742

Encl. Submitted documents

cc: Mr. Beverley Mahone
53 Pecan Shadows
Sargent, Texas 77414
(w/o enclosures)