OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 3, 2003

Ms. Belinda R. Perkins
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2003-0698

Dear Ms. Perkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175888.

The Teachers Retirement System of Texas (the "system") received a request for "certification information obtained by [the system]" pertaining to AIM Distributors Incorporated ("AIM"), American Express Financial Advisors ("American Express"), American Funds Distributors Incorporated ("American Funds"), Fidelity Investments ("Fidelity"), Oppenheimer Funds Distributors, Incorporated ("Oppenheimer"), and Putnam Investments ("Putnam"). You state that you will provide the requestor with some information. You claim, however, that portions of the remaining requested information may be excepted from disclosure under section 552.137 of the Government Code. In addition, you assert that the release of this information may implicate the interests of the third parties involved. Pursuant to section 552.305 of the Government Code, you have notified the six third parties of the request for their information. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered all claimed exceptions and reviewed the submitted information.

An interested third party is allowed 10 business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the third parties has submitted to this office any reasons explaining why their information should not be released. We thus have no basis for concluding that any portion of the submitted documents constitutes proprietary information. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999), 552 at 5 (1990), 542 at 3 (1990).

We note, however, that the submitted information includes bank account numbers. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. We have marked the type of account numbers that the system must withhold pursuant to this exception.

You note that the submitted information includes e-mail addresses of members of the public. Section 552.137 of the Government Code provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. We have marked the types of e-mail addresses that must be withheld pursuant to section 552.137 unless their owners have consented to their release.

In addition, we note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the system must withhold the types of account numbers and e-mail addresses we have marked. As you claim no other exception to disclosure and the remaining information is not otherwise confidential by law, all other submitted information must be released, subject to copyright laws where applicable.

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).

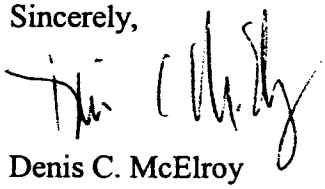
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 175888

Enc. Submitted documents

c: Mr. Mark Vane
Gardere Wynn Sewell LLP
600 Congress Avenue, 30th Floor
Austin, Texas 78701
(w/o enclosures)

Mr. Patrick White
AIM Distributors Inc.
11 Greenway Plaza, Suite 100
Houston, Texas 77046
(w/o enclosures)

Ms. Linda Maleitzke
American Express Financial Advisors
1924 AXP Financial Center
Minneapolis, Minnesota 55474
(w/o enclosures)

Ms. Kimberly Leone
American Funds Distributors, Inc.
3500 Wiseman Blvd.
San Antonio, Texas 78251
(w/o enclosures)

Mr. Steve Ebert
Fidelity Investments
P.O. Box 770002
Cincinnati, Ohio 45277-0091
(w/o enclosures)

Ms. Teresa M. Ward
Oppenheimer Funds Distributor, Inc.
498 Seventh Avenue
New York, New York 10018
(w/o enclosures)

Mr. Robert O'Brien
Putnam Investments
100 Financial Park: Mailstop G-4-F
Franklin, Massachusetts 02038
(w/o enclosures)