OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 22, 2003

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

OR2003-2669

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# 179781.

The Employees Retirement System of Texas ("ERS") received a request for "[a]ny correspondence, e-mail, letters, reports, memoranda or other records exchanged between the office of Tom Craddick and [ERS], Sheila Beckett or any other employees or agents of ERS or its governing board" since January 1, 1996. You indicate that ERS has released some of the requested information. However, you claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.109, 552.111, and 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[1]

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as section 815.503 of the Government Code. Section 815.503(a) of the Government Code provides that:

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[1]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.

> [r]ecords of members, annuitants, beneficiaries, and alternate payees under retirement plans administered by the retirement system that are in the custody of the system 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.

Gov't Code § 815.503; *see also* § 811.001(15) (defining "retirement system" as ERS).

You explain that ERS administers retirement and employment related benefits for several classes of public servants, including elected officials. You further explain that the submitted records relate to an ERS member and UGIP participant. Based on your representations and our review of the submitted information, we agree that section 815.503 governs the release of this information. Since the requestor does not appear to be within the class of persons to whom ERS may release such information, we conclude that the submitted benefit records are confidential under section 552.101 in conjunction with section 815.503(a) of the Government Code and must not be released. *See also* Gov't Code § 815.503(b) (identifying those persons to whom benefit information may released). As we are able to make a determination under section 552.101, we need not address your remaining claimed exceptions.

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

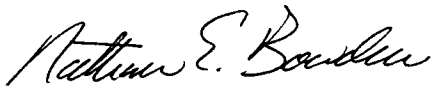
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *Tex. Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 179781

Enc: Submitted documents

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(w/o enclosures)