



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

September 29, 2003

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2003-6836

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188481.

The Comptroller of Public Accounts (the "comptroller") received a request for information relating to retired state employees. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. You also believe that this request for information implicates the interests of the Employees Retirement System of Texas ("ERS"). You notified ERS of this request for information, and ERS also has submitted arguments to this office.¹ We have considered your arguments and those of ERS and have reviewed the submitted information.²

We initially address the comptroller's representation that some of the submitted information is not responsive to this request for information. The comptroller states that the submitted information includes non-responsive bank account information. This decision does not address the non-responsive information, which the comptroller need not release.

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the comptroller to withhold any information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Next, we must determine whether the comptroller has complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to request an attorney general decision and state the exceptions to disclosure that it claims are applicable not later than the tenth business day after the date of the governmental body's receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, then the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302.

You inform us that the comptroller received the request for the submitted information on July 11, 2003. We note, however, that the comptroller has submitted two letters that request access to the information at issue. One of these letters is dated October 17, 2002, and the other is dated July 9, 2003. The October 17, 2002 letter is from the Texas Public Employees Association Retirees Chapter 149 (the "TPEA Retirees"). The July 9, 2003 letter is from the Texas Public Employees Association ("TPEA"). Both of these letters are addressed to the same employee of the comptroller. The TPEA Retirees' letter requests a "[l]isting of retired persons from all State agencies for the period November 1, 2001 through October 31, 2002." The TPEA letter states that a representative of the TPEA Retirees, Ms. Eloise Harris-Teas,

submitted the enclosed request to [the comptroller] on October 17, 2002. It has been brought to our attention that this request has not been fulfilled and no correspondence has been received as to why. I would like to resubmit her request on her behalf.

Thus, the TPEA letter asserts that the TPEA Retirees' letter was submitted to the comptroller and that the comptroller failed to respond. In requesting this decision, the comptroller has neither responded to TPEA's assertions nor otherwise accounted for the TPEA Retirees' letter. Accordingly, we conclude that the comptroller has failed to comply with section 552.301 of the Government Code in requesting this decision. Therefore, the submitted information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome

when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, the comptroller and ERS have submitted arguments under sections 552.101 and 552.117 of the Government Code. As these exceptions can provide compelling reasons for non-disclosure under section 552.302, we will address the submitted arguments.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. The comptroller and ERS raise section 552.101 in conjunction with section 815.503 of the Government Code. As amended by the 78th Legislature, section 815.503(a) provides as follows:

(a) Records of members, annuitants, retirees, 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 the retirement system is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the public access provisions of Chapter 552 [of the Government Code], except as otherwise provided by this section.

Act of June 1, 2003, 78th Leg., R.S., ch. 1111, § 28, 2003 Tex. Session Law Serv. 3178, 3183 (Vernon) (to be codified as amendment to Gov't Code § 815.503(a)). Section 815.503(b) provides in part that "[t]he retirement system may release the records . . . to another governmental entity having a legitimate need for the information to perform the purposes of the retirement system[.]" Gov't Code § 815.503(b). Section 815.503(c) provides in part that "[t]he records of a member, annuitant, retiree, beneficiary, or alternate payee remain confidential after release to a person as authorized by this section." *Id.* § 815.503(c).

The comptroller informs us that the submitted information was compiled from ERS information that directs annuity/retirement payments to be made to state employees who have retired. The comptroller also states that the submitted information is held by the comptroller for payroll/payment/warrant and related purposes. ERS informs us that the ERS participant information necessary to compile a list of the names and addresses of retirees would be retrieved from ERS participant records that are confidential under section 815.503. Based on the representations of the comptroller and ERS and our review of the submitted information, we conclude that this information is confidential in its entirety under section 815.503 of the Government Code. Therefore, the submitted information is excepted from disclosure under section 552.101 of the Government Code as information made confidential

by law. As we are able to make this determination, we need not address the comptroller's arguments under section 552.117.

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).

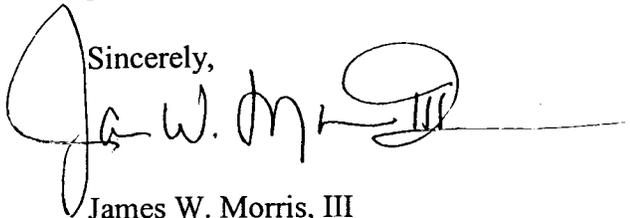
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a horizontal line extending to the right from the end of the signature.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 188481

Enc: Submitted documents

c: Ms. Beth Hasty
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