The ruling you have requested has been amended as a result of litigation and has been attached to this document.

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2004

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2004-0330A

Dear Mr. Junell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 200432.

This office issued Open Records Letter No. 2004-0330 (2004) to the Teacher Retirement System of Texas (the "system") on January 15, 2004. We have re-examined our ruling in ORL No. 2004-0330, and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of this chapter). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on January 15, 2004.

The system received a request for records pertaining to requests for private equity information received by the system and for information related to the requestor "and his interests." You state that some responsive information has been made available to the requestor. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.104, 552.107, 552.111, 552.117, and 552.137 of the Government Code. You also assert that the release of some of the requested information may implicate the proprietary interests of the third parties involved. Pursuant to section 552.305

of the Government Code, you have notified the third parties whose proprietary interests may be involved 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 received correspondence from several interested third parties objecting to the release of portions of the requested information. We have considered the claimed exceptions and reviewed the submitted information.[1]

We begin by noting that some of the submitted information is the identical information at issue in a pending lawsuit involving the Office of the Attorney General, the system, and a third party, *Nordic Capital V, Ltd. v. Abbott*, No. GN 400670, 126th District Court, Travis County, Texas. Furthermore, your arguments with regard to that information are similar to your arguments in the litigation. Accordingly, we do not address your arguments with regard to that information and will allow the trial court to resolve the issue of whether records of the type at issue must be released to public requestors.

However, we note that you have also submitted information in the instant request for a ruling that is not the same information that is the subject of the pending lawsuit. Therefore, we will address this information.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. First, the governmental body must demonstrate that it has specific marketplace interests. *Id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *Id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *Id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

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[1]The system informs us that "any information contained in a submitted [private placement memoranda] that does not relate to confidentiality or nondisclosure is not responsive to the instant request for information." Therefore, this ruling does not address that information.

You assert that the system has specific marketplace interests in some of the information at issue because the system is constitutionally responsible for the investment of trust assets in excess of $80 billion. *See* Tex. Const. art. XVI, § 67(a)(3) (requiring each statewide benefit system to have board of trustees to administer system and invest funds in accordance with prudent investor standard), (b)(1) (requiring that legislature establish "Teacher Retirement System of Texas to provide benefits for persons employed in the public schools, colleges, and universities supported wholly or partly by the state"). You state that the system has a fiduciary duty to the trust beneficiaries to diversify investments. *See* RESTATEMENT (THIRD) OF TRUSTS § 227(b), cmts. e-g (requiring trustees to diversify investments, if prudent, as part of their duty to act as prudent investors). You indicate that the system fulfills its responsibilities, in part, by investing in the private marketplace and assert that the system has an on-going interest in preserving its ability to compete effectively in this marketplace. *See* Gov't Code § 825.301(a) (authorizing system's board of trustees to invest in, among other things, "securities," as that term is defined by section 4 of the Securities Act, Tex. Civ. Stat. art. 581-4). Based on these representations, we conclude that the system has demonstrated that it has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. *See* Open Records Decision No. 593 (1991).

You also list several possible ways in which the release of portions of the submitted information would harm the system's marketplace interests. The information at issue concerns private equity funds in which the system is a limited partner (the "system funds"). The system funds raise capital to invest in various companies (the "portfolio companies"). You state that "a primary goal of these investments is to capitalize on proprietary or specialized knowledge." You represent that, if the system funds were required to release information about their portfolio companies, those funds might be denied the opportunity to invest in prospective portfolio companies or forced to agree to less favorable investment terms to compensate the portfolio companies for the risk that their information will be released. As an investor in these equity funds, the system would in turn suffer the consequences of being denied these investment opportunities. You also state that competitors of the portfolio companies could use the information at issue to compete with the portfolio companies and thereby harm the system's investment. You also assert that competing equity funds could use the information at issue to compete with the system funds and thereby undermine the system funds' negotiation position, rob the funds of investment opportunities, or force the system funds to agree to lesser returns; these consequences would be borne by all of the investors, including the system. Based on these representations as well as other arguments contained in your brief, we conclude that the system has shown that release of the information at issue will bring about a specific harm to the system's marketplace interests. Accordingly, under section 552.104 of the Government Code, the system may withhold the information pertaining to portfolio companies submitted in Exhibits 4, 5, and 6.

You next claim that Exhibits 3, 5, and 6 may contain e-mail addresses of members of the public that are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 provides:

> (a) Except as otherwise provided by this section, an 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 this chapter.
>
> (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
>
> (c) Subsection (a) does not apply to an e-mail address:
>
> > (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
> >
> > (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
> >
> > (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
> >
> > (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.
>
> (d) Subsection (a) does not prevent a governmental body from disclosing an e- mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. 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. E-mail addresses that are encompassed

by subsection 552.137(c) are also not excepted from disclosure under section 552.137. We have marked the e-mail addresses that are excepted from disclosure under section 552.137(a). Unless the system has received affirmative consent for the release of these marked e-mail addresses, we conclude that it must withhold them pursuant to section 552.137(a) of the Government Code.

You assert that section 552.117 of the Government Code may also be applicable to some of the submitted information. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the system may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees or officials who timely elected to keep their personal information confidential, the system must withhold their home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees or officials have family members. The system may not withhold this information under section 552.117 for those employees or officials who did not make a timely election to keep the information confidential.

Even if an employee or official did not make a timely section 552.024 election, social security numbers may be withheld in some circumstances under section 552.101 of the Government Code.[2] A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the system pursuant to any provision of law enacted on or after October 1, 1990.

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[2]Section 552.101of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

Next, we address your claim under section 552.107(1) of the Government Code. This section protects information that comes within the attorney-client privilege. When asserting the attorney-client privilege under section 552.107(1), a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002).

First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. *See* TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5).

Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You inform us that the information at issue under section 552.107(1) reveals communications between attorneys for the system, or their representatives, and the attorneys' clients or their representatives, including representatives of contractors for the system. You also state that these communications were not intended to be disclosed to persons other than those to whom communications were made in furtherance of the rendition of professional legal services to the system. Based on your representations and our own review of the information that you seek to withhold under section 552.107(1), we conclude that this exception is applicable to some of the information at issue. You have not demonstrated,

however, and it is not otherwise clear to this office that section 552.107(1) is applicable to other information for which you claim this exception. We have marked the information that the system may withhold under section 552.107(1).

You also contend that Exhibits 5 and 6 include certain information that is excepted from public disclosure under section 552.111 of the Government Code. Section 552.111 excepts from required public disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* Open Records Decision No. 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* Open Records Decision No. 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982). The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990). We note that section 552.111 encompasses policy-related communications between a governmental body and its consultants.[3]

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[3]*See* Open Records Decision Nos. 631 at 2 (1995) (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 563 at 5-6 (1990) (private entity engaged in joint project with

merely an abstract possibility or unwarranted fear." *Id.* at 204; Open Records Decision No. 677 at 7.

You also assert the work product privilege aspect of section 552.111. You have not demonstrated, however, that any of the submitted information constitutes attorney work product that the system may withhold under section 552.111.

We turn now to the third parties' arguments for the remaining submitted information.[4] One of the third parties states that it submitted its information to the system with a statement indicating that such information was to remain confidential. However, information that is subject to disclosure under the Act may not be withheld simply because the party submitting it anticipates or requests confidentiality. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 676-78 (Tex. 1976). Further, it is well-settled that a governmental body's promise to keep information confidential is not a basis for withholding that information from the public, unless the governmental body has specific authority to keep the information confidential. *See* Open Records Decision Nos. 514 at 1 (1988), 476 at 1-2 (1987, 444 at 6 (1986). Consequently, the remaining submitted information must fall within an exception to disclosure in order to be withheld.

One third party asserts that its information is not responsive to the instant request for information. Generally speaking, the determination of whether or not information is responsive to a particular request lies with the governmental body that receives the request and has a duty to make a good faith effort to relate a request to information that it holds or to which it has a right of access. *See* Open Records Decision No. 561 at 8 (1990). When a governmental body submits information to this office, we assume that it does so because it has in good faith concluded that such information is in fact responsive to the request at issue. Therefore, to the extent that the remaining submitted records contain information pertaining to this company, we will address the company's arguments.

Several third parties claims that the remaining submitted information is excepted from disclosure under section 552.104. Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. However, the purpose of this exception is to protect the interests of a governmental body usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *See id.* at 8-9. Therefore, we do not consider the third parties' claims under section 552.104, and because the system does not

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[4]We note that the arguments submitted by some of the third parties address information that has either already been withheld under section 552.104, or was not submitted to this office by the system. To the extent that the remaining submitted information has already been withheld under section 552.104, we do not address the third party arguments. To the extent the information was not submitted to this office, this ruling does not address it.

contend that the remaining submitted information is excepted under section 552.104, none of it may be withheld on this basis.

One of the third parties that submitted comments to this office argues that its remaining submitted information is confidential under federal securities law. The Securities Act of 1933 (the "Securities Act"), subchapter I, chapter 2A of title 15 of the United States Code, provides registration requirements for public offerings of securities. We note, however, that while the Securities Act also provides for certain exemptions from these registration requirements, it does not expressly make information confidential. *See* 15 U.S.C. § 77d(2) (registration provisions inapplicable to transactions by issuer not involving public offering). In order for section 552.101 to apply, a statute must contain language expressly making certain information confidential. *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987). Confidentiality cannot be implied from the structure of a statute or rule. *See* Open Records Decision No. 465 at 4-5 (1987). Accordingly, the system may not withhold any portion of the submitted information from disclosure pursuant to section 552.101 of the Government Code in conjunction with the Securities Act.

Several third parties claim that portions of their information are excepted from disclosure pursuant to section 552.101 of the Government Code. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101; *see also* Open Records Decision Nos. 611 at 1 (1992) (relating to common-law privacy), 600 at 4 (1992) (relating to constitutional privacy), 478 at 2 (1987) (relating to statutory confidentiality). We note that these third parties have not asserted any law, and we are not aware of any law, that makes any portion of the remaining submitted information confidential under section 552.101. Accordingly, we conclude that the system may not withhold any portion of the remaining submitted information pertaining to these companies under section 552.101 of the Government Code.

Nine of the third parties raise section 552.110 as an exception to disclosure. This section protects the proprietary interests of private parties by excepting from disclosure two types of information: (1) "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision," and (2) "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." *See* Gov't Code § 552.110(a)-(b).

The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts, which holds a "trade secret" to be

> any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving

> materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business . . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Restatement of Torts § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). If the governmental body takes no position on the application of the "trade secrets" component of section 552.110 to the information at issue, this office will accept a private party's claim for exception as valid under that component if that party establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law.[5] *See* Open Records Decision No. 552 at 5 (1990). The private party must provide information that is sufficient to enable this office to conclude that the information at issue qualifies as a trade secret under section 552.110(a). *See* Open Records Decision No. 402 at 3 (1983).

Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Having considered each entity's arguments, we find that two of the third parties have made a *prima facie* case that some of the information each company seeks to withhold is protected under section 552.110(a) as trade secret information. Moreover, we have received no arguments that rebut these claims as a matter of law. We therefore conclude that the system must withhold the portions of the remaining submitted information pertaining to these companies that we have marked pursuant to section 552.110(a). We find, however, that

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[5]The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

(1) the extent to which the information is known outside of [the company];
(2) the extent to which it is known by employees and other involved in [the company's] business;
(3) the extent of measures taken by [the company] to guard the secrecy of the information;
(4) the value of the information to [the company] and [its] competitors;
(5) the amount of effort or money expended by [the company] in developing the information;
(6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Restatement of Torts § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

these two companies have not shown that any of the remaining information they seek to withhold meets the definition of a trade secret or that its release would cause these companies substantial competitive harm. Therefore, the remaining information pertaining to these two companies may not be withheld pursuant to section 552.110.

We find that one of the third parties has made specific factual or evidentiary showings that the release of some of the information it seeks to withhold would cause the company substantial competitive harm. This information, which we have marked, must be withheld pursuant to section 552.110(b). We find, however, that this company has not shown that any of the remaining information it seeks to withhold meets the definition of a trade secret or that its release would cause the company substantial competitive harm. Therefore, the remaining information pertaining to this company may not be withheld pursuant to section 552.110.

Having considered the arguments of the remaining third parties, we find that they have failed to make a *prima facie* case that any of the information at issue constitutes trade secrets. Further, we find that these parties have made only conclusory allegations and have made no specific factual or evidentiary showing that release of their information would likely cause them substantial commercial harm. Accordingly, the system may not withhold the information pertaining to the remaining third parties under section 552.110.

In summary, under section 552.104 of the Government Code, the system may withhold the information pertaining to portfolio companies submitted in Exhibits 4, 5, and 6. Unless the system has received affirmative consent for the release of the e-mail addresses that we have marked, it must withhold them pursuant to section 552.137(a) of the Government Code. For those employees or officials who timely elected to keep their personal information confidential, the system must withhold their home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees or officials have family members. The system may not withhold this information under section 552.117 for those employees or officials who did not make a timely election to keep the information confidential. Even if an employee or official did not make a timely section 552.024 election, a social security number may be withheld in some circumstances under section 552.101 of the Government Code in conjunction with federal law. We have marked the information that the system may withhold under sections 552.107(1) and 552.111. The system must withhold the information that we have marked under section 552.110. The remaining responsive information must be released to the requestor.

Open Records Letter No. 2004-0330 is overruled to the extent it conflicts with this current ruling.

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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 194311
Enc. Submitted documents

c: Mr. Stephen N. Lisson
Initiate Publications
P.O. Box 2013
Austin, Texas 78768-2013
(w/o enclosures)

Third party entities

CAUSE NO. GN400670

NORDIC CAPITAL V, LTD, AS GENERAL PARTNER OF NORDIC CAPITAL, V, L.P., Plaintiff,	§	IN THE DISTRICT COURT OF
V.	§	
TEACHER RETIREMENT SYSTEM OF TEXAS AND ITS INTERIM EXECUTIVE DIRECTOR RONNIE G. JUNG, IN HIS OFFICIAL CAPACITY; THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS AND ATTORNEY GENERAL GREG ABBOTT, IN HIS OFFICIAL CAPACITY, Defendants.	§	TRAVIS COUNTY, TEXAS
	§	126TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff Nordic Capital V, LTD. as General Partner of Nordic Capital V, L.P. ("Nordic Capital"), Defendants Greg Abbott, Attorney General of Texas and the Office of the Attorney General (collectively, referred to as "Attorney General"), and the Teacher Retirement System of Texas and its Executive Director Ronnie G. Jung (collectively, referred to as "TRS"), appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Stephen N. Lisson, was sent reasonable notice of this setting and of the parties' agreement that the TRS must withhold certain information from him; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of

DISTRICT CLERK
TRAVIS COUNTY, TEXAS

APPROVED:

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