



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 1, 2005

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

OR2005-00947

Dear Mr. Junell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 218006.

The Teacher Retirement System of Texas (the "system") received a request for information pertaining to private equity firms and any press release or statements concerning a specified lawsuit. You state that some responsive information has been released to the requestor. However, you claim that portions of the remaining requested information are excepted from disclosure pursuant to sections 552.103, 552.104, 552.111, and 552.137 of the Government Code. You also claim that release of some of the responsive information may implicate the proprietary interests of third parties. Accordingly, pursuant to section 552.305, you state that you have notified the interested third parties of the request and of their opportunity to submit comments to this office.<sup>1</sup> 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 the claimed exceptions and reviewed the submitted information.

Section 552.103 provides as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or

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<sup>1</sup> The system notified the following interested third parties: Draper Fisher Jurvetson and Grove Street Advisors, LLC.

employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that the system is a party to a pending lawsuit, styled *Texas Growth Fund, et al. v. Texas Attorney General Gregg Abbott*, in the 353<sup>rd</sup> Judicial District Court of Travis County. The system was involved in the pending litigation on the date the system received the present request. Furthermore, you contend that the submitted information in Exhibits A, B, and C pertains to the pending litigation. Based on your representation and our review, we agree that section 552.103 is applicable to the submitted information in Exhibits A, B, and C.<sup>2</sup>

We note, however, that once information has been obtained by all parties to litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). Thus, responsive information to which all of the parties in the pending litigation have previously had access is not excepted from disclosure under section 552.103(a), and it must be disclosed.<sup>3</sup> Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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<sup>2</sup> As our ruling on this information is dispositive, we do not address the other arguments with regard to this information.

<sup>3</sup> Pursuant to your comments, we acknowledge that the system has not waived the section 552.103 privilege by submitting these documents for our review in accordance with this request. See Gov't Code § 552.3035.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov’t Code § 552.137(a)-(c)*. Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses at issue in Exhibit D do not appear to be of a type specifically excluded by section 552.137(c). Thus, the system must withhold the e-mail addresses you have marked under section 552.137 unless their owners have affirmatively consented to their release. *See Gov’t Code § 552.137(b)*.

In summary, the system may withhold the information in Exhibits A, B, and C pursuant to section 552.103 of the Government Code. The system must withhold the e-mail addresses you have marked under section 552.137 unless their owners have affirmatively consented to their release. The remaining information in Exhibit D must be released to the requestor.

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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 218006

Enc. Submitted documents

c: Mr. Yamil Berard  
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(w/o enclosures)

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