ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2005

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

OR2005-03292

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# 222656.

The Teacher Retirement System of Texas (the "system") received a request for information regarding a named participant. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.[1]

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. You raise section 552.101 in conjunction with section 825.507 of the Government Code. This section provides in relevant part:

> (a) Records of a participant that are in the custody of the [Teacher Retirement System of Texas] or of an administrator, carrier, attorney, consultant, or governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure in a

[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.

form that would identify an individual and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section.

(b) The retirement system may release records of a participant, including a participant to which Chapter 803 [of the Government Code] applies, to:

(1) the participant or the participant's attorney or guardian or another person who the executive director determines is acting on behalf of the participant;

(2) the executor or administrator of the deceased participant's estate, including information relating to the deceased participant's beneficiary;

(3) a spouse or former spouse of the participant if the executive director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(4) an administrator, carrier, consultant, attorney, or agent acting on behalf of the retirement system;

(5) a governmental entity, an employer, or the designated agent of an employer, only to the extent the retirement system needs to share the information to perform the purposes of the retirement system, as determined by the executive director;

(6) a person authorized by the participant in writing to receive the information;

(7) a federal or state criminal law enforcement agency that requests a record for a law enforcement purpose;

(8) the attorney general to the extent necessary to enforce child support; or

(9) a party in response to a subpoena issued under applicable law if the executive director determines that the participant will have a reasonable opportunity to contest the subpoena.

. . . .

(g) In this section, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system.

Gov't Code § 825.507(a)-(b), (g). You inform us that the submitted information relates to a participant in the retirement system. You also state that the requestor has neither asserted that any of the provisions of section 825.507(b) are applicable in this instance nor provided any information that would allow the system to determine that any of these provisions apply. Based on your representations, we conclude that the requested information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 825.507 of the Government Code.

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).

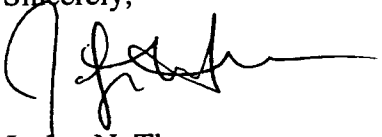
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 222656

Enc. Submitted documents

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Office of Program Integrity
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(w/o enclosures)