



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 26, 2008

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

OR2008-03982

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# 306131.

The Teacher Retirement System of Texas ("TRS") received a request for "all proposals to [TRS's] most recent regular actuarial RFP as well as [the] most recent actuarial audit RFP." You state that you have released some of the requested information to the requestor. You claim that some of the requested information is excepted from disclosure under section 552.136 of the Government Code. You also believe that this request for information implicates the proprietary interests of third parties. You state, and provide documentation showing, that you have notified the interested third parties of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor.<sup>1</sup> See Gov't Code § 552.305(d); see also 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 the applicability of exception to disclose under the Act in certain circumstances). We have received comments from Buck. We have considered the claimed exceptions and reviewed the submitted information.

---

<sup>1</sup>TRS notified the following third parties pursuant to section 552.305 of the Government Code: Milliman, Inc. ("Milliman"); the Bank of New York Mellon ("Mellon"); the Segal Company ("Segal"); Rudd and Wisdom, Inc. ("Rudd"); Buck Consultants ("Buck"); and Gabriel, Roeder, Smith & Company ("Gabriel"). You inform this office that third party Rudd had no objection to release of its proposal.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, Milliman, Mellon, Segal, Rudd, and Gabriel have not submitted to this office any reasons explaining why their information should not be released. Therefore, these companies have provided us with no basis to conclude that they have protected proprietary interests in any of the submitted information. *See, e.g., id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, we conclude that TRS may not withhold any portion of the submitted information on the basis of any proprietary interest Milliman, Mellon, Segal, Rudd, or Gabriel may have in the information.

Buck asserts that its information is excepted from disclosure pursuant to section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. However, section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As TRS does not seek to withhold any information pursuant to this exception, TRS may not withhold any of the information at issue pursuant to section 552.104 of the Government Code. *See* Open Records Decision No. 592 (1991) (governmental body may waive section 552.104).

The submitted information contains insurance policy numbers. Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. TRS must withhold the insurance policy numbers you have marked under section 552.136.

Finally, we note that some of the submitted information bears notice of copyright protection. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, TRS must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code. The remaining submitted information must be released to the requestor, but any information protected by copyright must be released in accordance with copyright law.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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 Office of the Attorney General 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. 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/mcf

Ref: ID# 306131

Enc. Submitted documents

c: Mr. Ed Macdonald  
Cavanaugh Macdonald  
Consulting, L.L.C.  
3550 Busbee Parkway, Suite 250  
Kennesaw, Georgia 30144  
(w/o enclosures)

Mr. Robert M. May  
Rudd and Wisdom, Inc.  
9500 Arboretum Boulevard, Suite 200  
Austin, Texas 78759  
(w/o enclosures)

Ms. Patrice A. Beckham  
Milliman, Inc.  
1120 South 101<sup>st</sup>, Suite 400  
Omaha, Nebraska 68124  
(w/o enclosures)

Mr. Timothy Oliver  
Buck Consultants  
14911 Quorum Drive, Suite 200  
Dallas, Texas 75254  
(w/o enclosures)

Mr. Thomas Cavanaugh  
Bank of New York Mellon  
101 Barclay Street  
New York, New York 10286  
(w/o enclosures)

Mr. W. Michael Carter  
Gabriel, Roeder, Smith & Company  
5605 North MacArthur Boulevard  
Irving, Texas 75038-2631  
(w/o enclosures)

Mr. Leon F. Joyner  
The Segal Company  
2018 Powers Ferry Road, Suite 850  
Atlanta, Georgia 30339  
(w/o enclosures)