



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 2, 2008

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

OR2008-06054

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# 308914.

The Teacher Retirement System of Texas (the "system") received a request for the following seven categories of information: 1) "[a]n audio or video recording of the February [2008] board meeting"; 2) "[e]lectronic copies of all presentation materials provided during the December [2007] and February [2008] board meetings, including updates on the asset allocation transition and calendar year-end investment performance reports (including comparisons with other public systems)"; 3) "[a]n audio or video recording of recent meetings of the Alternative Assets Committee for which minutes have not yet been approved"; 4) "[e]lectronic copies of all presentation materials for the Alternative Assets Committee over the past 12 months, including 'deal logs'"; 5) "[a] description of the strategic partner program and information on what money managers have been chosen as finalists or selected"; 6) "[a] list of newly hired individuals in the investment division, including any biographical information, and a list of vacancies"; and 7) "[a] list of newly hired and/or approved external money managers, the amounts of dollars committed and disbursed, and any memos describing the rationale for investing with these firms."<sup>1</sup> You state that you have provided the requestor with portions of the requested information. You also state that the system does not have information responsive to category number seven

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<sup>1</sup>We note that the system sought and received clarification of the information requested. See Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

of this request.<sup>2</sup> You claim that some of the submitted information is excepted from disclosure under sections 552.104, 552.111, 552.117, 552.130, 552.137, and 552.143 of the Government Code. You also indicate that release of the submitted information may implicate the proprietary interests of several third parties. Accordingly, you have notified the interested third parties of this request and of their right to submit arguments to this office as to why the submitted information should not be released.<sup>3</sup> See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from BlackRock, ProLogis, Hamilton, Altius, Apax, Lion, and Avenue. We have considered all of the submitted arguments and reviewed the submitted information.

Initially, you assert that some of the submitted information is subject to a previous determination. In Open Records Decision No. 673 (2001), this office set forth the circumstances under which a governmental body may rely on a ruling from this office as a previous determination for purposes of section 552.301(a) of the Government Code. See Open Records Decision No. 673. In that decision, this office noted that there are two types of previous determinations. The first type exists when the requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling was addressed to the same governmental body, the ruling concluded that the information is or is not excepted from disclosure, and the facts, circumstances, and law on which the prior ruling was based have not changed. The second type is an attorney general decision that explicitly grants a governmental body or class of governmental bodies a previous determination that may be relied upon to withhold a specific type of information without seeking an attorney general's ruling if certain conditions are met.

In this instance, you inform us that a portion of the submitted information pertaining to "deal logs" within Exhibit D.4 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-16107 (2007). In that ruling, we determined that the system must withhold the investment information it marked in the submitted "deal log" under section 552.143(b) of the Government Code and release the remaining information. As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, the system must continue to rely on this ruling as a previous determination and withhold or release the information pertaining to

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<sup>2</sup>We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.— San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>3</sup>The system notified the following third parties pursuant to section 552.305 of the Government Code: BlackRock Retail Opportunity Fund, L.L.C. ("BlackRock"); Forum Asian Realty Income II, L.P. ("Forum"); L&B Diversified Strategy Partners, L.P. ("L&B"); ProLogis Mexico Industrial Fund I, L.P. ("ProLogis"); Tricon IX, L.P. ("Tricon"); Altius Associates Limited ("Altius"); Hamilton Lane ("Hamilton"); The Townsend Group ("Townsend"); Albourne America, L.L.C. ("Albourne"); Apax Europe VII, L.P. ("Apax"); Lion Capital Partners II, L.P. ("Lion"); Apollo Investment Fund VII, L.P. ("Apollo"); Avenue Special Situations Fund V, L.P. ("Avenue"); Kelso Investment Associates VIII, L.P. ("Kelso"); and Ennis Knupp & Associates ("Ennis").

“deal logs” within Exhibit D.4 in accordance with Open Records Letter No. 2007-16107. *See* ORD 673. However, you also assert that “a [t]ype 2 previous determination under OR2007-16107 should apply to the same information in the other responsive deal logs contained in Exhibits D.1, D.2, D.3, and D.5.” We note, however, that Open Records Letter No. 2007-16107 does not meet any of the criteria discussed in Open Records Decision No. 673 for the second type of previous determination. Moreover, Open Records Letter No. 2007-16107 clearly states that it must not be relied upon as a previous determination regarding any other records other than those addressed in that ruling. Therefore, this open records letter ruling is not a second type of previous determination for the submitted “deal logs”, and the system may not rely on it as such.

We next consider your arguments for the information submitted as Exhibits A through C, which includes applications and resumes of system personnel. Section 552.117(a)(1) of the Government Code exempts 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 of the Government Code. Gov’t Code § 552.117(a)(1). Section 552.117 also encompasses a personal cellular telephone number, provided that the cellular phone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (stating that section 552.117 is not applicable to mobile phone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). Thus, the system may only withhold information under section 552.117 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 received. You state, and provide supporting documentation showing, that the individuals at issue elected to keep the majority of their personal information confidential before the system received the request for information; therefore, the system must withhold the information we have marked under section 552.117(a)(1) of the Government Code. We note, however, that two employees did not elect to keep their home addresses confidential. Thus, we have not marked this information and it may not be withheld under section 552.117.

Section 552.130 of the Government Code exempts from disclosure information relating to a Texas motor vehicle driver’s license and information relating to a Texas motor vehicle title or registration. Gov’t Code § 552.130. We note, however, that section 552.130 does not apply to out-of-state motor vehicle record information. We have marked the Texas driver’s license information that the system must withhold under section 552.130 of the Government Code.

Section 552.137 of the Government Code exempts 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). *Id.* § 552.137(a)-(c). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). You inform

us that the individuals to whom the e-mail addresses belong have not affirmatively consented to the release of their e-mail addresses. Therefore, the system must withhold the e-mail addresses we have marked under section 552.137.

We next consider your arguments for the remaining information submitted as Exhibit D. We first note, however, that some of the information within the documents you have labeled as Exhibits D.1, D.2, D.3, D.4, and D.5 is subject to section 552.0225 of the Government Code. Section 552.0225(b) provides in relevant part as follows:

(b) The following categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under this chapter:

(1) the name of any fund or investment entity the governmental body is or has invested in;

...

(4) the amount of money, expressed in dollars, the governmental body has committed to a fund or investment entity;

(5) the amount of money, expressed in dollars, the governmental body is investing or has invested in any fund or investment entity;

...

(7) the internal rate of return or other standard used by a governmental body in connection with each fund or investment entity it is or has invested in and the date on which the return or other standard was calculated;

(8) the remaining value of any fund or investment entity the governmental body is or has invested in;

(9) the total amount of fees, including expenses, charges, and other compensation assessed against the governmental body by, or paid by the governmental body to, any fund or investment entity or principal of any fund or investment entity in which the governmental body is or has invested;

(10) the names of the principals responsible for managing any fund or investment entity in which the governmental body is or has invested;

...

(12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity;

*Id.* § 552.0225(b)(1), (4), (5), (7), (8), (9), (10), (12). You have represented that Exhibits D.1, D.2, D.3, D.4, and D.5 contain post-investment information about the system's investments in private funds that is subject to section 552.0225(b). The exceptions to disclosure found in the Act do not apply to information that is made public by section 552.0225. See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the system must release the information subject to subsections 552.0225(b)(1), (4), (5), (7), (8), (9), (10), and (12) of the Government Code.

Finally, you claim that section 552.143 of the Government Code applies to the remaining information submitted as Exhibit D that is not subject to section 552.0225(b). Section 552.143 provides in part the following:

(a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from the requirements of Section 552.021.

(b) Unless the information has been publicly released, pre- and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

(c) All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), (13)-(16) is confidential and excepted from the requirements of Section 552.021. This Subsection does not apply to a governmental body's purchase, holding, or disposal of, restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. This Subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

Gov't Code § 552.143 (a)-(c). You explain that the information you have labeled under section 552.143(a) consists of information held by the system that was prepared and provided by prospective private investment funds to the system. Based on your representations and our review, we agree that the system must withhold the information you have labeled under section 552.143(a) of the Government Code that is not subject to section 552.0225(b). You also inform us that the information you have labeled under section 552.143(b) consists of pre-investment and post-investment due diligence information about system investments that was prepared by the system's investment staff or advisors. You state that this information has not been released to the public. Based on your

representations and our review of the information at issue, we agree that the system must withhold the information you have labeled under section 552.143(b) of the Government Code that is not subject to section 552.0225(b).<sup>4</sup>

In summary, the system must continue to rely on our decision in Open Records Letter No. 2007-16107 with respect to the information pertaining to "deal logs" within Exhibit D.4 that was subject to that ruling. The system must withhold the information we have marked under sections 552.117, 552.130, and 552.137 of the Government Code in Exhibits A through C. The system must release the information subject to section 552.0225(b) of the Government Code in Exhibits D.1, D.2, D.3, D.4, and D.5. The system must withhold the remaining information you have labeled in Exhibit D under subsections 552.143(a) and (b) of the Government Code. The remaining submitted information 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 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

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<sup>4</sup>As our ruling for the information submitted as Exhibit D is dispositive, we need not address the interested third parties' arguments or the system's remaining arguments against disclosure.

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,



Allan D. Meesey  
Assistant Attorney General  
Open Records Division

ADM/mcf

Ref: ID# 308914

Enc. Submitted documents

c: Mr. Steven Brull  
Institutional Investor Magazine  
3380 Wade Street  
Los Angeles, California 90066-1552  
(w/o enclosures)

Ms. Cathy Ebert  
50 California  
San Francisco, California 94111  
(w/o enclosures)

Mr. Russell C. Platt  
Alexandra House  
18 Charter Road, Suite 2604  
Central, Hong Kong  
China  
(w/o enclosures)

Mr. G. Andrews Smith  
8750 North Central Expressway  
Suite 800  
Dallas, Texas 75231  
(w/o enclosures)

Mr. Paul C. Congleton  
4545 Airport Way  
Denver, Colorado 80239  
(w/o enclosures)

Mr. Gary Berman  
Tricon IX, L.P.  
1067 Yonge  
Toronto, Ontario M4W2L2  
Canada  
(w/o enclosures)

Mr. John Hess  
Altius Associated Limited  
20 Grosvenor Place, 2<sup>nd</sup> Floor  
London, SW1X, 7HN  
England  
(w/o enclosures)

Mr. Stephen R. Brennan  
Hamilton Lane  
One Belmont Avenue, 9<sup>th</sup> Floor  
Bala Cynwyd Pennsylvania 19004  
(w/o enclosures)

Mr. Rob Kochis  
Principal  
The Townsend Group  
Skylight Office Tower  
1660 West Second Street, Suite 450  
Cleveland, Ohio 44113  
(w/o enclosures)

Mr. John Claisse  
Albourne America, L.L.C.  
One Ferry Building, Suite 280  
San Francisco, California 94111  
(w/o enclosures)

Dr. Martin Halusa  
Apax Europe VII, L.P.  
15 Portland Place  
London W1B 1PT  
England  
(w/o enclosures)

Mr. Kelly Mayer  
Lion Capital Partners II, L.P.  
21 Grosvenor Place  
London SW1X 7HF  
England  
(w/o enclosures)

Ms. Stephanie Drescher  
Apollo Investment Fund, L.P.  
9 West 57<sup>th</sup>  
New York, New York 10019  
(w/o enclosures)

Mr. Alexander Wolfman  
Avenue Special Fund V, L.P.  
535 Madison Avenue  
New York, New York 10022  
(w/o enclosures)

Mr. George Matelich  
Kelso Investment  
Associates VIII, L.P.  
320 Park Avenue  
New York, New York 10022  
(w/o enclosures)

Ms. Mary Bates  
Mr. Steve Voss  
Ennis Knupp & Associates  
Riverside Plaza  
10 South, Suite 1600  
Chicago, Illinois 60606-3709  
(w/o enclosures)