ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2008

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

OR2008-08178

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# 313092.

The Teacher Retirement System of Texas ("TRS") received a request for information pertaining to TRS investments in The Blackstone Group from 2000 through 2006. You state that the yellow-highlighted information is not responsive to the request.[1] You state that some of the requested information has been released, but claim that the some of the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.143 of the Government Code. Blackstone Real Estate Partners V ("Blackstone"), in correspondence to this office, asserts that its information is excepted under sections 552.101, 552.110, and 552.143 of the Government Code. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

[1]This ruling does not address the public availability of any information that is not responsive to the request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.–San Antonio 1978, writ dism'd).

Initially, you acknowledge, and we agree, that some of the submitted information is subject to section 552.0225 of the Government Code. Section 552.0225(b) provides in relevant part as follows:

> 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;
>
> . . .
>
> (3) each date the governmental body invested in a fund or investment entity described by Subdivision (1);
>
> . . .
>
> (5) the amount of money, expressed in dollars, the governmental body is investing or has invested in any fund or investment entity;
>
> (6) the total amount of money, expressed in dollars, the governmental body received from any fund or investment entity in connection with an investment;
>
> (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;
>
> . . .
>
> (12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity[.]

We agree that the information you have highlighted in green is subject to section 552.0225. We note that some of the remaining submitted information is also subject to this section. The exceptions to disclosure found in the Act, including sections 552.104, 552.110, and 552.143(a) of the Government Code, 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, TRS must release the submitted information that is subject to subsections 552.0225(b)(1), (4), (5), (6), (7), (8), (9), and (12) of the Government Code, including the green-highlighted information.

You assert that the remaining information is excepted under section 552.143 of the Government Code. Section 552.143(a) provides that "[a]ll 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." You inform us that the requested information pertains to a TRS investment in BREP V.TE.2 L.P., which is a Blackstone private real estate fund. The submitted information consists of quarterly reports on recent activity involving the private real estate fund that were prepared by Blackstone, a private investment fund, and provided to TRS. Based on these representations and our review of the submitted information, we agree that TRS must withhold the remaining information under section 552.143(a) of the Government Code.[2]

To conclude, TRS must release the information subject to section 552.0225 of the Government Code. TRS must withhold the remaining information under section 552.143 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 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

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[2]As our ruling is dispositive, we do not address your other arguments to withhold this information.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 313092

Enc. Submitted documents

c: Ms. Stephani Finch
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