



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2008

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2008-10331

Dear Ms. Soucy:

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# 317288.

The Comptroller of Public Accounts (the "comptroller") received a request for information pertaining to payments made to seventeen named employees of the State of Texas as well as information pertaining to payments made on behalf of the named employees' by any state agency including the Employees Retirement System of Texas ("ERS") over a specified period of time.¹ You state that the comptroller will release some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. This office also received arguments from ERS, in relation to the requested information.² See Gov't Code § 552.304 (providing that interested party may submit written comments stating why information at issue in request for attorney general decision should or should not be released). We have considered the arguments submitted and have reviewed the submitted representative sample of information.³

¹We note that the comptroller indicates they asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We note that the comptroller states it notified ERS of the request for information.

³We 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

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. Section 815.503 of the Government Code provides in pertinent part that the

[r]ecords of members, annuitants, retirees, beneficiaries, and alternate payees under retirement plans administered by the retirement system that are in the custody of the system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure, and the retirement system is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section.

Id. § 815.503(a); *see also id.* § 811.001(15) (defining “retirement system” as ERS). The comptroller has submitted a list of payroll deductions. The comptroller states that the submitted information is “held by [the comptroller] acting on behalf of ERS” and that the payroll deductions were made “on behalf of ERS and at the direction of ERS.” Based upon the comptroller’s arguments and our review of the submitted information, we agree that the submitted information is made confidential under section 815.503 of the Government Code and must be withheld under section 552.101 of the Government Code.⁴

You also ask this office to issue a decision that would authorize the comptroller to withhold records held by the comptroller on behalf of or for ERS under section 552.101 of the Government Code in conjunction with section 815.503 of the Government Code without the necessity of again requesting a decision by this office under the Act. *See id.* § 552.301; Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a decision at this time. 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

to the extent that those records contain substantially different types of information than that submitted to this office.

⁴As our ruling on this issue is dispositive, we need not address any remaining arguments.

such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

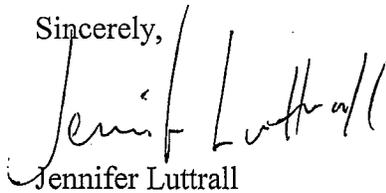
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 317288

Enc. Submitted documents

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