



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2008

Ms. Melanie Barton
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2008-10405

Dear Ms. Barton:

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# 317553.

The Dallas County Treasurer (the "county") received a request for information regarding the county retirement system, including information pertaining to a named individual's retirement account.¹ You state that you have released some of the requested information. We understand you to contend that the submitted information is not subject to the Act. You also claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address your argument that the county is not required to seek a ruling under the Act. We understand you to claim that the submitted information is not subject to the Act. The Act applies only to public information. *See* Gov't Code §§ 552.021, .221. Section 552.002 of the Act defines "public information" as information "collected, assembled, or maintained under a law or ordinance or in connection with transaction of official business: (1) by a governmental body; or (2) for a governmental body, and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). You contend that, pursuant to section 845.115 of the Government Code, the county is not

¹We note that the requestor has asked the county to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the county has made a good faith effort to do so.

required to seek a ruling under the Act because information pertaining to participants in the Texas County and District Retirement System's (the "system") retirement program is not public information for the purposes of section 552.002. Section 845.115 of the Government Code provides in relevant part:

(a) Information contained in records in the custody of the retirement system or maintained in the custody of another governmental entity or an administrator or carrier acting in cooperation with or on behalf of the retirement system concerning a participant is confidential. Except as otherwise provided by this section, the retirement system is not required to accept or comply with a request for a record or information about a record of a participant or to seek an opinion from the attorney general because the records of a participant are exempt from the public information provisions of Chapter 552 [of the Government Code]. The information may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the participant or the participant's attorney, guardian, executor, administrator, conservator, or other person who the director determines is acting in the interest of the participant or the participant's estate;

(B) a spouse or former spouse of the participant and the 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;

(C) a governmental official or employee and the director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or

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

(2) the information is disclosed pursuant to a subpoena and the director determines that the participant will have a reasonable opportunity to contest the subpoena.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the retirement system.

(b-1) This section does not require the retirement system to compile or disclose a list of participants' names, addresses, social security numbers, or other descriptive or demographic information.

(c) The director may designate other employees of the retirement system to make the necessary determinations under Subsection (a).

Id. § 845.115(a)-(c). Participant is defined as “a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system. *See id.* §§ 845.114(a), 845.115(f). We note that in this instance, section 845.115(a) states only that “records in the custody of the retirement system or maintained in the custody of another governmental entity or an administrator or carrier acting in cooperation with or on behalf of the retirement system concerning a participant is confidential. Except as otherwise provided by this section, the retirement system is not required to accept or comply with a request for a record or information about a record of a participant or to seek an opinion from the attorney general because the records of a participant are exempt from the public information provisions of [the Act].” Thus, even if we accept your argument that the submitted information constitutes participant records that are subject to section 845.115 and that the information is not subject to the Act’s public access provisions, you have failed to demonstrate how this language removes the information covered by section 845.115 from the scope of the Act’s provision defining public information. *See id.* § 552.002(a). Therefore, we conclude that the submitted information constitutes public information that is subject to the Act and may only be withheld if an exception to disclosure under the Act applies.

You also contend that the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 845.115 of the Government Code. Section 552.101 of the Government Code 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 845.115 makes confidential records of a participant in the system’s retirement program that are in the system’s custody or maintained in the custody of another governmental entity or an administrator or carrier acting in cooperation with or on behalf of the system. The information at issue consists entirely of system information concerning a member, retiree, annuitant, or beneficiary that appears to be maintained by the county in cooperation with the system. The requestor is not a person to whom disclosure is permitted under section 845.115 and you do not indicate the county has otherwise been authorized to release the information. *See id.* § 845.115(a). Therefore, to the extent the county maintains the submitted information in cooperation with or on the behalf of the system, the information at issue is confidential under section 845.115 of the Government Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code. To the extent the county does not maintain the submitted information in cooperation with or on the behalf of the system, it may not be withheld on this basis.

In the event that the submitted information is not confidential in its entirety under section 845.115 of the Government Code in conjunction with section 552.101, we note that the county may be required to withhold some of the submitted information under section 552.117 of the Government Code.² Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. See Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of an official or employee who did not timely request under section 552.024 that the information be kept confidential. We have marked information that the county must withhold under section 552.117(a)(1) if the individual concerned timely requested confidentiality for the information under section 552.024.³

In summary, to the extent the county maintains the submitted information in cooperation with or on the behalf of the system, the information at issue is confidential under section 845.115 of the Government Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code. In the event the county does not maintain the submitted information in cooperation with or on the behalf of the system, we have marked information that the county must withhold under section 552.117(a)(1) if the individual concerned timely requested confidentiality for the information under section 552.024. Any remaining information that is not excepted under section 552.101 or section 552.117 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

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

³Regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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). 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 317553

Enc. Submitted documents

c: Mr. Kevin Krause
Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)