



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2008

Mr. David R. Gavia
General Counsel
Texas Municipal Retirement System
P.O. Box 149153
Austin, Texas 78714

OR2008-10575

Dear Mr. Gavia:

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# 317909.

The Texas Municipal Retirement System (the "retirement system") received a request for specified categories of information pertaining to "actuarial data that is used to determine how annuities are computed and the funding of such by cities[.]"¹ You state that you have released some of the information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹You inform us that the retirement system sought and received clarification of the request from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We 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 to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we address the requestor's comments. The requestor asserts that the retirement system maintains certain information. However, you state that the retirement system does not maintain information regarding employer contributions to the retirement system for specific accounts. Specifically, you state that "[the payments made each month by an employer] are not allocated to a specific employee/member account, but are used to fund annuities/retirements for all eligible employees/members of the employer." You also state that the retirement system does not maintain a "[m]onthly benefit for the 'Retiree Life Only' Benefit at earliest qualified date for [each] specific account." Rather, you state that the retirement system maintains "the monthly benefit for the 'Retiree Life Only' benefit at earliest qualified date for each eligible member." Whether the retirement system maintains the information at issue is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Accordingly, we must accept the retirement system's representations that it does not maintain certain information.

We now turn to your argument for the submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by other statutes. Section 855.115 of the Government Code provides in relevant part:

(a) Information contained in records that are in the custody of the [retirement system] concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 552.101 [of the Government Code], and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual or the individual's attorney, guardian, executor, administrator, conservator, or other person who the [executive director of the retirement system (the "director")] determines is acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual after 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 after 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 individual in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the director determines that the individual 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.

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

Gov't Code § 855.115(a)-(c). You assert that the submitted information is "identifiable with a specific individual." You state that the requestor is not a person to whom disclosure may be permitted under this provision. You explain that Exhibit B contains columns reflecting member date of birth, employer city number, service credit, and total contributions. You also explain that Exhibit C contains columns reflecting all cities for which a member has worked, end of year service credit and account balance, and retiree life only benefit. Although you argue that the information in Exhibit B and Exhibit C can be combined with other information obtained from each employer city to identify individual members, we find that none of the submitted information contains identifying information. Thus, the submitted information is not confidential under section 855.115 of the Government Code and may not be withheld under section 552.101 of the Government Code. As you raise no other exceptions to disclosure, you must release the submitted information to the requestor.

You also ask this office to issue a previous determination permitting the retirement system to withhold the information at issue under section 552.101 of the Government Code, without the necessity of requesting a ruling from our office under the Act. See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a previous determination at this time. Rather, 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,



Bill Dobie
Assistant Attorney General
Open Records Division

WJD/jb

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Enc. Submitted documents

c: Mr. Chuck Bahr
P.O. Box 295255
Lewisville, Texas 75029
(w/o enclosures)