



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2008

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

OR2008-12805

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# 321962.

The Texas Municipal Retirement System (the "system") received a request for information relating to retired employees of the City of San Angelo, including (1) the number of annuitants in certain age categories who are receiving net monthly annuity payments in certain monetary categories and (2) the number of retirees in those same age categories who have retired under certain categories of years of current and prior service.<sup>1</sup> 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.

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 that other statutes make confidential. You raise section 552.101 in conjunction with section 855.115 of the Government Code, which provides in part:

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<sup>1</sup> You inform us that the system sought and received clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

(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 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 [executive] 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 [executive] 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 [executive] 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 [executive] 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 contend that the information contained in the submitted gross annuity and years of service tables is identifiable with specific individuals. You note that the tables include some categories that contain only one, two, or three retirees. You argue that the tables could be combined with other information, such as city records, historical knowledge of employees and their work histories, or published information, to identify a specific individual. We note that the submitted gross annuity table merely depicts

numbers of retirees arranged by categories of ages and annuity amounts. Similarly, the years of service table depicts numbers of retirees arranged by categories of ages and years of service. Having considered your arguments, we find that you have failed to demonstrate that any of the information in these tables is identifiable with a specific individual. We therefore conclude that the system may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 855.115 of the Government Code. As you claim no other exception to disclosure, the submitted information must be released.

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). 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).

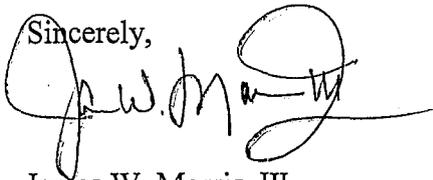
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', written in a cursive style.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/LBW/ma

Ref: ID# 321962

Enc. Submitted information

c: Mr. Russell Smith  
P.O. Box 62702  
San Angelo, Texas 76906  
(w/o enclosures)