



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2009

Mr. Timothy P. Wei  
Teacher Retirement System of Texas  
1000 Red River Street  
Austin, Texas 78701-2698

OR2009-03330

Dear Mr. Wei:

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# 337118.

The Texas Retirement System of Texas (the "system") received a request for four categories of information pertaining to four specific Walton Street Real Estate Funds. You inform us that you do not have information responsive to one of the specified funds.<sup>1</sup> You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, and 552.143 of the Government Code. You also state, and provide documentation showing, that you have notified the interested third party, Walton Street Capital, of the request and of its opportunity to submit comments to this office as to why the submitted information should not be released. *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 exceptions you claim and reviewed the submitted information.

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, you assert that portions of Exhibit 4.1 are not responsive to the request. In this instance, the fourth category of the request seeks information indicating the net internal rates of return for system opportunistic investments. You assert that only the information in Exhibit 4.1 pertaining to the net internal rates of return for system opportunistic investments and the information pertaining Walton Street Real Estate Funds is responsive to the request. Based on your representations and our review, we agree that only the information you have marked in Exhibit 4.1, along with the additional information we have marked, is responsive to the request at issue. This ruling does not address the public availability of non-responsive information, and the system is not required to release non-responsive information in response to this request.

Next, you acknowledge 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);

(4) the amount of money, expressed in dollars, the governmental body has committed to a fund or investment entity

(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;

...

(12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity[.]

Gov't Code § 552.0225. We agree that the information you have marked is subject to section 552.0225. We note that some of the remaining submitted information, which we have marked, is also subject to this section. The exceptions to disclosure found in the Act, including sections 552.104, 552.110, and 552.143, 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, the system must release the information you have marked, along with the additional information we have marked, that is subject to subsections 552.0225(b)(1), (3), (4), (5), (6), (7), (8), and (12) of the Government Code.

You assert that the remaining information is excepted under section 552.143 of the Government Code. Section 552.143 provides in part the following:

(a) All 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.

(b) Unless the information has been publicly released, pre- and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

Gov't Code § 552.143 (a), (b). You state that the remaining information consists of pre-investment and post-investment due diligence information about system investments that is maintained by the system. You state that this information has not been released to the public. Based on your representations and our review of the information at issue, we agree that the system must withhold the remaining information under section 552.143(b) of the Government Code.

In summary, the system must release the information you have highlighted, along with the information we have marked, that is subject to subsections 552.0225(b)(1), (3), (4), (5), (6),

(7), (8), and (12) of the Government Code. The remaining information must be withheld under section 552.143(b) of the Government Code.<sup>2</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/cc

Ref: ID# 337118

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.