



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2009

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2009-04599

Dear Mr. Junell:

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# 339505.

The Texas Retirement System of Texas (the "system") received a request for seven categories of investment information related to CIM Urban REIT, L.L.C. and CIM Fund III, L.P. (collectively, "CIM"). You state you have released some of the requested information to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.143 of the Government Code. You also state, and provide documentation showing, that you have notified CIM, the interested third party, 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 received comments from CIM.¹ We have considered the claimed exceptions and reviewed the submitted information, portions of which consist of representative samples of information.²

¹We note that CIM raises no exceptions to disclosure on its own behalf, but instead adopts the system's arguments.

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, you indicate that a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-03330 (2009). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude that, as we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the system may continue to rely upon Open Records Letter No. 2009-03330 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances, on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent that the submitted information is not encompassed by the previous ruling, we will address the submitted arguments.

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;
- (2) the date that a fund or investment entity described by Subdivision (1) was established;
- (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;

(9) the total amount of fees, including expenses, charges, and other compensation, assessed against the governmental body by, or paid by the governmental body to, any fund or investment entity or principal of any fund or investment entity in which the governmental body is or has invested;

(10) the names of the principals responsible for managing any fund or investment entity in which the governmental body is or has invested;

...

(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 types of information you have highlighted are subject to section 552.0225.³ Therefore, the system must release the marked information that is subject to section 552.0225(b) 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).

³You state that the information you have highlighted includes "a representative sample of [information] deemed public under [section] 552.0225(b)(1)[.]"

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 may continue to rely upon Open Records Letter No. 2009-03330 as a previous determination and withhold or release the submitted information that is identical to the information previously requested and ruled upon by this office in accordance with that ruling. The system must release the types of information you have highlighted that are subject to section 552.0225(b) of the Government Code. The remaining information must be withheld under section 552.143(b) of the Government Code.⁴

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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 339505

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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