



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2009

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2009-06086

Dear Ms. Soucy:

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# 340612 (Comptroller ID # 5581416645).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for information related to state employees who have retired and have been rehired. You state that you have released portions of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. This office also received arguments from Employees Retirement System of Texas ("ERS"), in relation to the requested information.¹ See Gov't Code § 552.304 (providing that interested party may submit written comments stating why information at issue in request for attorney general decision should or should not be released). We have considered the arguments submitted and have reviewed the submitted representative sample of information.²

¹We note that the comptroller states it notified ERS of the request for information.

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.

Section 552.101 exempts 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 815.503 of the Government Code provides in pertinent part that the

[r]ecords of members, annuitants, retirees, beneficiaries, and alternate payees under retirement plans administered by the retirement system that are in the custody of the system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure, and the retirement system is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section.

Id. § 815.503(a); *see also id.* § 811.001(15) (defining “retirement system” as ERS). The comptroller has submitted a list of retirees with their retirement and rehire agency codes, dates, job class, and payment information. The comptroller states that the submitted information is “held by [the comptroller] acting on behalf of ERS” and that the data the comptroller possesses is “on behalf of ERS and at the direction of ERS.” Based upon the comptroller’s arguments and our review, we agree that the submitted information, is made confidential under section 815.503 of the Government Code and must be withheld under section 552.101 of the Government Code.³

You also ask this office to issue a decision that would authorize the comptroller to withhold records held by the comptroller on behalf of or for ERS under section 552.101 of the Government Code in conjunction with section 815.503 of the Government Code without the necessity of again requesting a decision by this office under the Act. *See id.* § 552.301; Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a decision at this time.

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

³As our ruling on this issue is dispositive, we need not address any remaining arguments.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/eeg

Ref: ID# 340612

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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