



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2010

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

OR2010-00327

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# 366545.

The Teacher Retirement System (the "system") received a request for five categories of information pertaining to a retirement fund.¹ You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.110, 552.117, and 552.143 of the Government Code. You also claim release of Exhibit 1 may implicate the proprietary interests of third parties Beanpot Financial ("Beanpot"), Credit Suisse, Harch Capital ("Harch"), HFF Securities ("HFF"), KV Services II, Ltd. ("KV Services"), Onex Partners ("Onex"), the Stratford Company ("Stratford"), and XT Capital Partners ("XT"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request and of their right to submit arguments to this office as to why the communications at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act

¹ We note the requestor modified his request twice. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

in certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, we must address XT's assertion on behalf of itself and KV Services that their information in Exhibit 1 is not subject to the Act because a contract between the system and XT did not exist when the information at issue in Exhibit 1 was created. We note that information is within the scope of the Act if it relates to the official business of a governmental body and is maintained by a public official or employee of the governmental body. *See* Gov't Code § 552.002(a). Upon review, we find the submitted information pertains to the system's official business of investing and was information maintained by public officials or employees of the system when the instant request was received. Thus, the submitted information is subject to the Act.

You state that some of the submitted information may be 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[.]

Gov't Code § 552.0225(b)(1). We note that portions of the information in Exhibit 1 consist of the names of potential system investment funds and investment entities. Upon review, we agree the information we have marked in Exhibit 1 may be subject to section 552.0225(b)(1). However, you do not inform us which of the funds or entities at issue the system has invested in. Therefore, we must rule conditionally. To the extent the information we have marked in Exhibit 1 pertains to investment funds or entities the system is or has invested in, the system must release this information under section 552.0225(b)(1) of the Government Code. We note that although you assert this information additionally is subject to section 552.143 of the Government Code and HFF argues it is subject to section 552.110 of the Government Code, exceptions to disclosure found in the Act 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). On the other hand, if the information at issue does not pertain to a fund or entity in which the system is or has invested, then it need not be released pursuant to section 552.0225(b)(1).

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.

You assert the information in Exhibit 1 that is not subject to section 552.0225(b)(1) is excepted from disclosure under section 552.143 of the Government Code. Section 552.143 provides:

(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).

(c) All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), or (13)-(16) is confidential and excepted from the requirements of Section 552.021. This subsection does not apply to a governmental body's purchase, holding, or disposal of restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. This subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

Gov't Code § 552.143 (a)-(c). You state Exhibit 1 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. You also state the information at issue does not pertain to the direct purchase, holding, or disposal of restricted securities by the system. Based on your representations and our review of the information at issue, we agree the system must withhold the information in Exhibit 1 that is not subject to section 552.0225(b)(1) under section 552.143(b) of the Government Code.³

Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate

³As our ruling is dispositive, we do not address any remaining arguments for this information.

children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we agree that some of the information you have highlighted in yellow in Exhibit 2 is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the system must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find there is a legitimate public interest in some of the financial information at issue. *See* 540 S.W.2d at 685 (special circumstances of legitimate public interest). The disclosure statements in Exhibit 2 were submitted by trustees who make significant decisions for the system. These statements could provide information about potential conflicts of interest between a decision-maker's personal financial investments and the system's interests. Accordingly, there is a legitimate public interest in these individuals' financial investments. Further, you have failed to demonstrate that any of the remaining ownership information is highly intimate or embarrassing. Thus, none of the remaining information you have highlighted in yellow may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from public disclosure the family member information of current or former officials or employees of a governmental body who timely request that such information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state, and provide documentation showing, that certain individuals listed in Exhibits 2 and 3 elected to timely withhold their personal information in accordance with section 552.024. Accordingly, the system must withhold the personal information for these individuals in Exhibit 2 and 3, which you have marked in pink, as well as the additional information we have marked in Exhibit 3, pursuant to section 552.117 of the Government Code.

In summary, the system must release any information in Exhibit 1 that is subject to section 552.0225(b)(1) of the Government Code. The system must withhold the remainder of Exhibit 1 under section 552.143(b) of the Government Code. The system must withhold the information we have marked in Exhibits 2 and 3 under section 552.101 of the Government Code in conjunction with common-law privacy. The system must withhold the information it has marked in pink, as well as the additional information we have marked in Exhibit 3, under section 552.117(a)(1) of the Government Code. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 366545

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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