



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2010

Ms. Christi Worth
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2010-01234

Dear Ms. Worth:

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# 368201.

The Teacher Retirement System of Texas (the "system") received a request for all receipts, credit card statements, or any other documents showing travel expenses paid for the system since January 1, 2008. You state that you have provided some of the requested information. You state that you will redact home telephone numbers, home addresses, and family member information subject to section 552.117 of the Government Code under section 552.024 of the Government Code.¹ You also state you will redact social security numbers pursuant to section 552.147 of the Government Code.² You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.104, 552.136,

¹See Gov't Code § 552.024(c)(2) (if employee or official or former employee or official chooses not to allow public access to his or her personal information, the governmental body may redact the information without the necessity of requesting a decision from this office).

²Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. See Gov't Code § 552.147.

552.137, and 552.143 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by the common-law right to privacy. Gov't Code § 552.101. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See 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. Open Records Decision Nos. 545 (1990), 523 (1989) (individual's mortgage payments, assets, bills, and credit history). You assert that the submitted travel bills contain personal expenditures by system employees, for which the employees did not seek reimbursement. After reviewing the submitted information, we agree that a portion of the information you have marked is protected from disclosure under section 552.101 in conjunction with common-law privacy. Thus, the system must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to explain how the remaining information you have marked constitutes personal financial information. Thus, the remaining information may not be withheld on that basis.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See Open Records Decision No. 593 (1991)* (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. First, the

³We 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.

governmental body must demonstrate that it has specific marketplace interests. *Id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *Id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *Id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You assert that the system has specific marketplace interests in some of the information at issue because the system is constitutionally responsible for the investment of trust assets in excess of \$80 billion. *See* Tex. Const. art. XVI, §§ 67(a)(3) (requiring each statewide benefit system to have board of trustees to administer system and invest funds in accordance with prudent investor standard), (b)(1) (requiring that legislature establish "Teacher Retirement System of Texas to provide benefits for persons employed in the public schools, colleges, and universities supported wholly or partly by the state"). You state that the system has a fiduciary duty to the trust beneficiaries to diversify investments. *See* Restatement (Third) of Trusts § 227(b), cmts. e-g (requiring trustees to diversify investments, if prudent, as part of their duty to act as prudent investors). You indicate that the system fulfills its responsibilities, in part, by investing in the private marketplace and assert that the system has an on-going interest in preserving its ability to compete effectively in this marketplace. *See* Gov't Code § 825.301(a) (authorizing system's board of trustees to invest in, among other things, "securities," as that term is defined by section 4 of the Securities Act, Tex. Civ. Stat. art. 581-4).

Based on these representations, we conclude that the system has demonstrated specific marketplace interests and may be considered a "competitor" in the private marketplace for purposes of section 552.104. *See* Open Records Decision No. 593 (1991).

You argue that the release of the information you have marked in Exhibit 2 would signal the system's strategic and tactical policy direction before the system is ready to make it public. You also state that release of this information would allow the system's competitors to benefit from the system's confidential information without compensation to the system. Finally, you state that release of the information could impair the system's ability to obtain confidential information in the future. Based on your representations and our review, we conclude that the system has demonstrated that release of the information you have marked in Exhibit 2 would cause actual or potential harm to your interests in a particular competitive situation. Accordingly, we conclude that the information you have marked may be withheld under section 552.104.

You also note that the submitted information includes credit card and account numbers. Section 552.136 of the Government Code provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Upon review, we conclude the system must withhold the partial credit card account numbers and frequent flyer numbers you have marked under section 552.136 of the Government Code. We have marked some additional information that the system must withhold under section 552.136.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). The e-mail address you have marked in the submitted information is not of a type specifically excluded by section 552.137(c). Furthermore, you state you have not received consent to release the e-mail address at issue. Therefore, in accordance with section 552.137, the system must withhold the marked e-mail address.

You assert that a portion of the information in Exhibit 3 is excepted under section 552.143 of the Government Code. Section 552.143(a) provides that "[a]ll 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." Gov't Code § 552.143(a). You state the information you have marked in Exhibit 3 is not subject to section 552.0225 and consists of information prepared or provided by a private investment fund to the system. Based on your representation and our review of the information at issue, we agree that the system must withhold the information you have marked in Exhibit 3 under section 552.143(a) of the Government Code.

You acknowledge that portions of the remaining submitted information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an

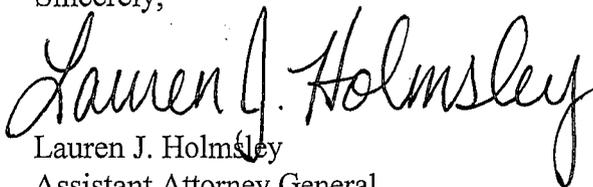
exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the system must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The system may withhold the information you have marked pursuant to section 552.104 of the Government Code. The system must withhold the information you have marked and the information we have marked under section 552.136 of the Government Code and the e-mail addresses you have marked under section 552.137 of the Government Code.⁴ The system must withhold the information you have marked in Exhibit 3 under section 552.143(a) of the Government Code. The system must release the remaining information, but any information that is protected by copyright may only be released in accordance with copyright law.

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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including credit card numbers under section 552.136 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 368201

Enc. Submitted documents

c: Requestor
(w/o enclosures)