



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2010

Mr. Robert D. Klausner
Fiduciary Counsel
Klausner & Kaufman, P.C.
10059 Northwest 1st Court
Plantation, Florida 33324

OR2010-07525

Dear Mr. Klausner:

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# 380306 (File No. 000029).

The Texas Municipal Retirement System (the "system"), which you represent, received a request for (1) the number of system members that are receiving pension stipends, vested but still working, or vested and not working but scheduled to receive a benefit until a future date; (2) the formula used to calculate pension benefits; and (3) the following information pertaining to members or surviving spouses receiving a monthly stipend at or above a specified amount: name, monthly stipend amount, final job or position worked before retirement, agency or location of final position, dates of employment, salary made the last full year of employment, and the current city, state, and zip code of residence. You state the system has released information responsive to items one and two above. You also state the system does not maintain information responsive to the request for the recipient's final job or position worked before retirement.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1(1990), 555 at 1-2 (1990), 416 at 5 (1984).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You assert that the information at issue is confidential under section 855.115 of the Government Code. Section 855.115 provides in relevant part:

(a) Information contained in records that are in the custody of the retirement system concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 552.101 [of the Government Code], and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual or the individual's attorney, guardian, executor, administrator, conservator, or other person who the [executive director of the retirement system (the "director")] determines is acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual after the director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(C) a governmental official or employee after the director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or

(D) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the director determines that the individual will have a reasonable opportunity to contest the subpoena.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the retirement system.

(c) The director may designate other employees of the retirement system to make the necessary determinations under Subsection (a).

Id. § 855.115(a)-(c). You assert that the submitted information is “identifiable with a specific individual.” You state that the requestor is not a person to whom disclosure may be permitted under this provision, and you do not indicate the system has otherwise been authorized to release the requested information. *See id.* § 855.115(a). Based upon these representations and our review of the information at issue, we conclude that the submitted information is confidential under section 855.115 of the Government Code and must be withheld pursuant to section 552.101 of the Government Code.

You also ask this office to issue a previous determination permitting the system to withhold information it holds that is identifiable with a specific individual under section 552.101 of the Government Code in conjunction with section 855.115 of the Government Code, without the necessity of requesting a ruling from our office under the Act. *See Gov’t Code* § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a previous determination at this time. Rather, this letter ruling is limited to the particular records 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 records 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 380306

Enc. Submitted documents

c: Requestor
(w/o enclosures)