



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2010

Mr. Timothy P. Wei
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2010-10478

Dear Mr. Wei:

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# 386677.

The Teacher Retirement System of Texas ("TRS") received a request for disclosure questionnaires relating to TRS's investment policies. You claim that most of the requested information is excepted from disclosure under section 552.143 of the Government Code. Although you take no position on the public availability of the rest of the requested information, you believe that the remaining information may implicate the interests of third parties.¹ You inform us that the third parties concerned were notified of the instant request

¹You inform us that the third parties concerned are Alyeska Group LLC, D. E. Shaw Investment Management, L.L.C., Fore Research and Management, GSO Capital Partners, Investcorp LLC, King Street Capital Management L.P., Lansdowne Partners Limited, Marathon Asset Management LLP and Marathon Asset Management LP ("Marathon"), Northwest Investment Management Company, Stephens Investment Management Group, The Rock Creek Group, Vaughan Nelson Investment Management, L.P., and Zais Group LLC; Brandes Investment Partners ("Brandes"), Cantillon Capital Management LLC, GMO, LLC, Jennison Associates, Knight Vinke Asset Management ("Knight"), Wellington Capital Management, Westwood Holdings Group ("Westwood"), and Willkie Farr & Gallagher LLP; and Advent International, AEW Capital Management, Alpha Group, Alterna Capital Partners, Altius Associates ("Altius"), AMB Property Corporation ("AMB"), Apax Partners ("Apax"), Apollo Management ("Apollo"), ARA, Austin Ventures,

for information and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We received correspondence from attorneys for or representatives of AMB, Apax, Apollo, BlackRock, Brandes, Bridgepoint, Carlyle, Charterhouse, CIM, First Reserve, Gores, Knight, LaSalle, Lee, Lionstone, MacFarlane, Marathon, Morgan Creek, Nautic, New Enterprise, Squadron, Square Mile, Stratford, Teays, THL, Triton, Warburg, Westwood, and Willis.² We have considered all of the submitted arguments and reviewed the submitted information.³

Avenue Capital Group, Bain Capital, BlackRock Private Equity Partners and BlackRock Realty ("BlackRock"), Blackstone Group, Bridgepoint Capital ("Bridgepoint"), Camden Property Trust, Candover, Canyon Capital, Capmark, Capri, Carlyle Group ("Carlyle"), CBRE, Cerberus Capital Management, Charterhouse Group ("Charterhouse"), CIM Group ("CIM"), Citigroup, Clayton Dubilier and Rice, CLSA Capital Partners, Colony Capital, Credit Suisse-First Boston, Crestview Advisors, CVC Capital Partners, Debevoise & Plimpton LLP, EnCap Investments, First Reserve Corporation ("First Reserve"), Five Mile Capital Partners, Forum Partners, Fried Frank, Fulbright & Jaworski LLP, Gibson Dunn, Goldman Sachs, Goodwin Procter LLP, Gores Group ("Gores"), Hamilton Lane ("Hamilton"), Heitman Capital Management, Hellman and Friedman, HgCapital, Highland Capital Partners, Hunt Realty, Invesco Real Estate, Iron Point Partners, Jordan Company, J. P. Morgan, Kelso and Company, Kohlberg Kravis Roberts, Kohlberg TE Investors, L&B Realty Advisors, LaSalle Investment Management ("LaSalle"), Lee Equity ("Lee"), Leonard Green and Partners, Lindsay Goldberg, Lion Capital, Lionstone Group ("Lionstone"), Lowenstein Sandler PC, MacFarlane Partners ("MacFarlane"), Madison Dearborn Partners, Mayer Brown LLP, Morgan Creek Capital Management ("Morgan Creek"), Morgan Stanley Investment Management, Morgan Stanley Real Estate, Nautic Partners ("Nautic"), New Enterprise Associates ("New Enterprise"), Nordic Capital, Oak Investment Partners, Oaktree Capital Management, Onex, Pacific Coast Capital Partners, Parkway Properties, Permira, Platinum Equity, Polaris Venture Partners, Principal Real Estate Investors, ProLogis, Providence Equity Partners, Prudential Real Estate Investors, Quad C Management, RLJ Development, Rothschild Realty, RREEF, Schulte Roth & Zabel LLP, Security Capital Research and Management, Simpson Thacher, SJ Berwin LLP, Squadron Capital Advisors ("Squadron"), Square Mile Capital Management ("Square Mile"), SteelRiver Infrastructure Partners, Stockbridge, Stratford Company ("Stratford"), TA Associates, Teays River Investments ("Teays"), TGF Management, Thayer Lodging Group, The Townsend Group ("Townsend"), Thomas H. Lee Partners ("THL"), TPG Capital, Tricon, Triton Financial ("Triton"), USAA Real Estate, Vinson & Elkins LLP, Walton Street Capital, Warburg Pincus ("Warburg"), Wayzata Investment Partners, Weil, Gotshal & Manges LLP, Westbrook Partners, White & Case LLP, Whitney and Company, and Willis Stein Partners ("Willis").

²Although we also received correspondence from an attorney for CSFB Emerging Opportunities Fund, L.P. ("CSFB"), TRS has neither submitted any information relating to CSFB nor otherwise indicated that information relating to CSFB is responsive to the instant request. Accordingly, this decision does not address CSFB's arguments.

³We note that some of the third parties' arguments encompass information that was not submitted by TRS in connection with its request for this decision. This decision is applicable only to the information that TRS has submitted to this office. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must submit the specific information it seeks to withhold or representative samples if the information is voluminous).

We understand some of the third parties to contend that some of the submitted information is not responsive to the instant request. We note that a governmental body that receives a request for information must make a good-faith effort to relate the request to any responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Thus, because TRS has submitted the information that it deems to be responsive to the instant request, we will address the public availability of all of the submitted information.

We also understand some of the third parties to contend that the information they provided to TRS is not subject to the Act. The Act is applicable to "public information," which is defined as consisting of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). In this instance, the submitted information was collected and is maintained by TRS in connection with the transaction of official business. The submitted information is therefore subject to the Act and must be released unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002, .006, .021.

Some of the third parties also contend that it was expected or agreed that their information would be kept confidential. We note that information is not confidential under the Act simply because the party that submitted the information anticipated or requested confidentiality. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act by agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information did not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Therefore, the submitted

information must be released unless it falls within the scope of an exception to disclosure, notwithstanding any expectation or agreement to the contrary.

We next note that TRS did not submit some of the information at issue to this office within its fifteen-business-day deadline under section 552.301(e) of the Government Code. *See* Gov't Code § 552.301(a), (e)(1)(D). Therefore, that information is presumed to be subject to required public disclosure under section 552.302 of the Government Code. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. In this instance, TRS seeks to withhold most of the information in question under section 552.143 of the Government Code, whose applicability can provide a compelling reason for non-disclosure under section 552.302. Moreover, third parties assert interests in the information in question. Accordingly, we will consider the claims of TRS and the third parties for all of the submitted information, including the information that was not timely submitted.

TRS states that some of the submitted information is subject to section 552.0225 of the Government Code. Section 552.0225(b) provides as follows:

(b) The following categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under [the Act]:

- (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;

(11) each recusal filed by a member of the governing board in connection with a deliberation or action of the governmental body relating to an investment;

(12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity;

(13) the minutes and audio or video recordings of each open portion of a meeting of the governmental body at which an item described by this subsection was discussed;

(14) the governmental body's percentage ownership interest in a fund or investment entity the governmental body is or has invested in;

(15) any annual ethics disclosure report submitted to the governmental body by a fund or investment entity the governmental body is or has invested in; and

(16) the cash-on-cash return realized by the governmental body for a fund or investment entity the governmental body is or has invested in.

Gov't Code § 552.0225(b). TRS has highlighted a representative sample of two types of information that are contained in the questionnaires submitted as Exhibit 1, specifically, the fund names and the names of persons who signed the questionnaires at issue, that TRS deems to be subject to section 552.0225(b). We understand TRS to represent that these types of information are subject to sections 552.0225(b)(1) and (10), respectively. *See id.* We note that some of the third parties contend that section 552.0225(b) is not applicable to the names of the persons who signed the questionnaires. The question of whether section 552.0225(b) encompasses the types of information TRS has highlighted involves issues of fact. This office cannot resolve factual disputes in the opinion process. *See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986).* Where fact issues cannot be resolved as a matter of law, we must rely on the facts that are represented to us by the governmental body in requesting our decision or upon those facts that are discernible from the information that was submitted for our review. *See Open Records Decision No. 552 at 4 (1990).* Therefore, based on TRS's representation that the types of information it has highlighted are subject to section 552.0225(b), we find that section 552.0225(b) is applicable to those types of information. We note that the exceptions to disclosure found in the Act do not apply to information that section 552.0225(b) makes public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).* We therefore conclude that the types of information TRS has highlighted must be released pursuant to section 552.0225(b) of the Government Code.

TRS contends that most of the remaining information at issue is excepted from disclosure under section 552.143 of the Government Code. Section 552.143 provides in part:

(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 [required public disclosure].

(b) Unless the information has been publicly released, pre-investment 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 [required public disclosure], except to the extent it is subject to disclosure under Subsection (c).

Gov't Code § 552.143 (a)-(b). TRS states that it administers a pension trust fund under provisions of the constitution and statutes of the State of Texas. TRS explains that its board of trustees adopted an Investment Policy Statement (the "statement") to provide a formal plan for investing pension fund assets, in order to achieve defined investment objectives consistent with TRS's mission statement and applicable law. TRS informs us that effective July 1, 2009, the board adopted an addendum to the statement (the "addendum") subtitled "Political Contributions; Improper Influence; Placement Agents and Finders." TRS explains that the purpose of the addendum is to ensure the integrity of all TRS investment transactions and conformity with the highest fiduciary, ethical and legal standards by all parties involved. TRS states that the addendum requires potential investment managers, as early as reasonably

possible in the due diligence process, to provide detailed, written responses to a questionnaire attached to the addendum (the "questionnaire"). TRS contends that section 552.143(a) is applicable to the remaining information in most of the questionnaires submitted as TRS's Exhibit 1. TRS states that the remaining information in most of those questionnaires was provided by private investment funds and is maintained by TRS. TRS also contends that section 552.143(b) is applicable to the remaining information in all of the questionnaires in Exhibit 1. TRS states that the remaining information in all of those questionnaires is used to ensure the integrity of its pre- and post-investment due diligence regarding TRS's investments and potential investments. TRS also states that the questionnaires in Exhibit 1 have not been publicly released. Based on these representations, we conclude that TRS must withhold the remaining information in the questionnaires in Exhibit 1 under section 552.143 of the Government Code.⁴

Next, we address the three questionnaires submitted as TRS's Exhibit 2. We note that TRS does not claim an exception to disclosure of the information in those questionnaires. TRS informs us that Townsend's questionnaire is being released, as Townsend does not object to its disclosure. With regard to the remaining questionnaires in Exhibit 2, we note that a third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Altius and Hamilton, the third parties that completed those questionnaires. Thus, because neither Altius nor Hamilton has demonstrated that any of the information in their respective questionnaires is proprietary for the purposes of the Act, TRS may not withhold any of the information in question on the basis of any interest that either Altius or Hamilton may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, the remaining questionnaires in Exhibit 2 must be released.

In summary: (1) TRS must release the types of information in the questionnaires in Exhibit 1 that are subject to section 552.0225(b); and (2) TRS must withhold the rest of the information in the questionnaires in Exhibit 1 under section 552.143(b) of the Government Code. The rest of the submitted information must be released.

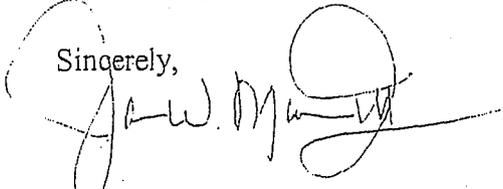
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

⁴As we are able to make this determination, we need not address the third parties' arguments against disclosure of the remaining information in Exhibit 1.

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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/tp

Ref: ID# 386677

Enc: Submitted documents

c: Requestor
(w/o enclosures)

All Third Parties
(w/o enclosures)