



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2010

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

OR2010-13709

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# 393001.

The Teacher Retirement System of Texas ("TRS") received a request for responses to a questionnaire regarding "Political Contributions; Improper Influence; Placement Agents and Finders." You state that most of the requested information is the subject of a previous open records letter ruling. You claim that most of the remaining requested information is excepted from disclosure under section 552.143 of the Government Code. You also 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 for information and of their right to submit arguments to this office as to why the information should not be released.² We have considered your arguments and reviewed the information you submitted.

¹You inform us that the third parties concerned are Algert Coldiron Investors LLC; AQR Capital Management LLC; Henderson Global Investors; Ivory Investment Management LP; NuWave Investment Management LLC; P2 Capital Partners LLC; Platinum Investment Management Ltd.; STG Capital Management LP; and Walker Smith Capital Management LP.

²See 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).

You state that most of the requested information was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2010-10478 (2010). In the previous ruling, we concluded that TRS must withhold most of the information at issue under section 552.143 of the Government Code, but must release other information not protected by section 552.143, including certain information encompassed by section 552.0225(b) of the Government Code. You do not indicate that there has been any change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude that TRS must dispose of the requested information encompassed by Open Records Letter No. 2010-10478 in accordance with the previous ruling.³ See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Next, we must determine whether TRS complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that must be followed in asking this office to determine whether requested information is excepted from public disclosure. See Gov't Code § 552.301(a). Section 552.301(b) provides that a governmental body must ask for the attorney general's decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. See *id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. See *id.* § 552.301(e)(1)(A)-(D). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. 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).

You inform us that TRS received the instant request for information on April 15, 2010. You explain that TRS, acting in good faith, communicated with the requestor for the purpose of clarifying and narrowing the request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You state that the requestor provided the final clarification and narrowing of his request on June 21. You have provided documentation of TRS's communications with the requestor.

³As we are able to make this determination, we need not address the arguments submitted by AMB U.S. Logistics Fund, Marathon Asset Management, and Stratford Land Fund III regarding information encompassed by the previous ruling.

Based on your representations and documentation, we consider TRS's ten- and fifteen-business-day periods for requesting a decision under section 552.301 to have begun on June 21. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Therefore, we consider TRS's request for this decision and subsequent correspondence with this office, which we received on July 6 and 13, to have been timely submitted.⁴

You state 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

⁴You explain that because TRS was closed on July 5, July 6 was the tenth business day after the date of TRS's receipt of the requestor's response to the request for clarification.

- 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). You have highlighted two types of information contained in the submitted questionnaires, specifically the fund names and the names of persons who signed the questionnaires, that TRS deems to be subject to section 552.0225(b). You indicate that

these types of information are subject to sections 552.0225(b)(1) and (10), respectively. *See id.* 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 agree that TRS must release the highlighted information pursuant to section 552.0225(b) of the Government Code.

You contend that the rest of the submitted information 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). You state that TRS administers a pension trust fund under provisions of the constitution and statutes of the State of Texas. You explain that TRS's 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. You inform 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." You explain 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. You state 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"). You contend that section 552.143(a) is applicable to the remaining information in most of the submitted questionnaires. You state that the remaining information in those questionnaires was provided by private investment funds and is maintained by TRS. You also contend that section 552.143(b) is applicable to the remaining information in all of the submitted questionnaires. You state that the remaining information in the questionnaires is used to ensure the integrity of the pre- and post-investment due diligence process regarding TRS's investments and potential investments. You also state that the submitted questionnaires have not been publicly released. Based on your representations, we conclude that TRS must withhold the remaining information in the submitted questionnaires under section 552.143 of the Government Code.

In summary: (1) TRS must dispose of the requested information encompassed by Open Records Letter No. 2010-10478 in accordance with the previous ruling; (2) the highlighted information in the submitted questionnaires must be released pursuant to section 552.0225(b) of the Government Code; and (3) TRS must withhold the rest of the submitted information under section 552.143(b) of the Government Code.

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,



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Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 393001

Enc: Submitted documents

c: Requestor
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