



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2010

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

OR2010-16155

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# 396411.

The Teacher Retirement System of Texas (the "TRS") received a request for (1) invitations by TRS to brokers, placement agents, fund managers or others to advise on, invest or manage TRS funds; (2) the identity of each individual or business that responded to those invitations, but was not selected; and (3) the evaluation process undertaken by TRS in reviewing the responses to the invitations.¹ You claim the requested information is excepted from disclosure under sections 552.104 and 552.143 of the Government Code. You also state, and provide documentation showing, you notified two interested third parties, Ennis Knupp and Townsend Group, of TRS's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain

¹TRS sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you inform us some of the submitted information is subject to section 552.0225 of the Government Code. Section 552.0225(b) provides the following:

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;
- (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;

²We assume 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 those records contain substantially different types of information than that submitted to this office.

(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). The exceptions to disclosure found in the Act do not apply to information that is made public by section 552.0225. *Id.*; *cf.* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). You state some of the requested information, including the submitted information you have highlighted in yellow, is subject to section 552.0225. Therefore, TRS must release the requested information that is subject to section 552.0225.

You assert the remaining information is excepted under section 552.143(b) of the Government Code. TRS has the authority to retain external managers to manage a limited

portion of TRS's assets. *See* Gov't Code § 825.301(a-2) (board of trustees may delegate investment authority and contract with private professional investment managers for investment and management of not more than 30 percent of TRS trust assets). Pursuant to this authority, you inform us TRS sent to prospective investment managers unsolicited "invitations" regarding the possible management of TRS assets. You inform us some of the prospective investment managers responded to this invitation, and TRS retained some, but not all, of the managers that responded with investment management agreements.

Section 552.143(b) of the Government Code provides the following:

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).

Gov't Code § 552.143(b). You seek to withhold two types of information under section 552.143(b) of the Government Code: the identity of each prospective investment manager that TRS did not retain, and TRS's evaluations of each of these prospective investment managers. You assert the information in Exhibits 1.10 through 3.2 consists of "pre- and post-investment due diligence materials on the core Real Estate Asset Managers and the Dislocated Credit programs, including reviews and analysis, maintained by TRS." You state the information in Exhibits 4.1 through 4.3 "reflects TRS' pre- and post-investment due diligence evaluation of candidates to serve as external managers, which include the excepted identities of the entities not selected." You also inform us the submitted information is not subject to section 552.143(c) "because the information involves the purchase, holding, or disposal of restricted securities for the purpose of reinvestment." *See id.* § 552.143(b)-(c). As noted above, you inform us you have released the information subject to section 552.0225 of the Government Code. After review of your arguments and the submitted information, we agree TRS must withhold the information at issue under section 552.143(b) of the Government Code.³

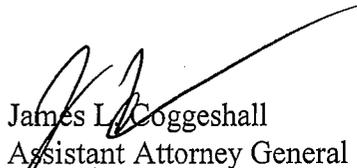
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

³As our ruling is dispositive, we do not address your other arguments to withhold this information.

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tp

Ref: ID# 396411

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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