



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2010

Ms. Doreen E. McGookey
General Counsel
Fort Worth Employees' Retirement Fund
3801 Hulen Street, Suite 101
Fort Worth, Texas 76107

OR2010-16997

Dear Ms. McGookey:

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# 399585.

The Fort Worth Employees' Retirement Fund (the "fund") received a request for the portfolio performance/review by RV Kuhns, the update on Olympus Real Estate Fund, and the Update of RV Kuhns' work plan that were presented at the June 22, 2010 investment committee meeting.¹ You state you will release some of the responsive information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.143 of the Government Code. In addition, you state release of this information may implicate the proprietary interests of interested third parties. Accordingly, you have notified Hyphen Solutions, Ltd. ("Hyphen") and RV Kuhns and Associates, Inc. ("RV Kuhns") of the request and of their right to submit arguments to this office as to why

¹We note that the fund received a clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (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).

their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received correspondence from Hyphen and RV Kuhns. We have considered the exception you claim, as well as the third party arguments, and reviewed the submitted information.

The fund, Hyphen, and RV Kuhns assert that the information at issue is confidential under section 552.143 of the Government Code. Section 552.143 provides:

(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 the requirements of Section 552.021.

(b) 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).

(c) All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), or (13)-(16) is confidential and excepted from the requirements of Section 552.021. This subsection does not apply to a governmental body's purchase, holding, or disposal of restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. This subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

(d) For the purposes of this chapter:

(1) "Private investment fund" means an entity, other than a governmental body, that issues restricted securities to a governmental body to evidence the investment of public funds for the purpose of reinvestment.

(2) "Reinvestment" means investment in a person that makes or will make other investments.

(3) "Restricted securities" has the meaning assigned by 17 C.F.R. Section 230.144(a)(3).

Gov't Code § 552.143 (a)-(d). The fund, Hyphen, and RV Kuhns assert that the submitted information relates to the fund's direct purchase, holding, or disposal of restricted securities. *See id.* § 552.143(d)(3) (defining "restricted securities" for purposes of section 552.143). Based on these representations and our review, we find that subsection 552.143(c) is applicable to the submitted information. However, we note portions of the submitted information are subject to section 552.0225(b) of the Government Code. Pursuant to sections 552.0225(b)(3), 552.0225(b)(5), and 552.0225(b)(14) of the Government Code, we have marked the information pertaining to the fund's investment date, the amount invested, as well as the fund's percentage of ownership interest in the restricted security. This information may not be withheld under section 552.143(c) of the Government Code. *Id.* § 552.143(c). Furthermore, although RV Kuhns and Hyphen claim this information is excepted from disclosure under section 552.110 of the Government Code, we note the exceptions to disclosure found in the Act do not apply to information that is made public by section 552.0225 of the Government Code. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).* As no further exceptions to disclosure of this information are raised, the fund must release the information we have marked under subsections 552.0225(b)(3), (b)(5), and (b)(14). The remaining information must be withheld under section 552.143(c) 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 399585

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Ms. Susan Denmon Banowsky
Vinson & Elkins
For Hyphen
2801 Via Fortuna, Suite 100
Austin, Texas 78746
(w/o enclosures)

Mr. Dainius A. Krivinskas
Director of Real Estate Consulting, Principal
R.V. Kuhns & Associates, Inc.
190 South LaSalle Street
Chicago, Illinois 60603
(w/o enclosures)