



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2010

Ms. Rebecca Merrill
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2010-17111

Dear Ms. Merrill:

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# 399856.

The Texas Retirement System of Texas (the "system") received a request for the following information pertaining to entities chosen for "manager relationships" subsequent to the system's invitation to manage certain investment programs: (1) the identity of the managers or "invitee[s]"; (2) the manager candidate's response to the system's invitation; and (3) "any due diligence materials regarding the relevant entities." You claim the submitted 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 the interested third parties of the system's receipt of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released to the requestor.¹ 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 comments from LaSalle, J.P. Morgan, Oaktree,

¹The interested third parties are: Invesco Real Estate; LaSalle Investment Management ("LaSalle"); USAA Real Estate Company; Credit Suisse; Morgan Stanley; KKR & Co.; Oaktree Capital Management, L.P. ("Oaktree"); Blackrock; Neuberger Berman Fixed Income, L.L.C. ("Neuberger"); J.P. Morgan Asset Management ("J.P. Morgan"); GSO; Highland Capital Management; and Marathon Asset Management ("Marathon").

Marathon, and Neurberger. We have considered the submitted arguments and reviewed the representative samples of information.²

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 samples" of records submitted to this office are 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 that 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). We agree that the type of information you have highlighted is subject to section 552.0225(b).³ Therefore, the system must release this information to the requestor.

³You indicate that the information you have highlighted in Exhibits C and E is a representative sample of the information that is deemed to be public under section 552.0225(b).

You assert the remaining information is excepted under section 552.143(b) of the Government Code. Section 552.143 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 state the remaining information consists of pre-investment due diligence information gathered by the system in its evaluation of potential investment managers. You indicate this information has not been released to the public. Based on your representations and our review of the information at issue, we agree the system must withhold the remaining information under section 552.143(b) of the Government Code.

In summary, the system must release the type of information you have highlighted that is subject to subsection 552.0225(b) of the Government Code. The remaining information must be withheld under section 552.143(b) of the Government Code.⁴

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

⁴As our ruling is dispositive, we do not address the other arguments to withhold this information.

Ref: ID# 399856

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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