



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2010

Ms. Paige H. Saenz
Assistant General Counsel
City of Austin Employees' Retirement System
418 East Highland Mall Boulevard
Austin, Texas 78752-3720

OR2010-19302

Dear Ms. Saenz:

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# 404200.

The City of Austin Employees' Retirement System (the "system") received a request for a list of its top one-hundred largest annual recipients which includes the recipients' names, titles, annual amount received, and total amount received from the system. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

We initially address your assertion that complying with the request would require the system to compile or manipulate the data. A request for public information that requires a governmental body to program or manipulate existing data is not considered to be a request for the creation of new information. *See* Gov't Code § 552.231; *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681-82 (Tex. App.—Eastland 2000, pet. denied) (plaintiffs' request required manipulation of existing data rather than creation of new information); Open Records Decision No. 661 at 6-7 (1999). Thus, if information that is otherwise available to a governmental body can be programmed or manipulated for the purpose of responding to a request for information, then the governmental body has access to information responsive to that request. Section 552.231 prescribes procedures that must be followed if, in

¹We 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.

responding to a request for information, a governmental body would be required to program or manipulate data. See Gov't Code § 552.231(a) (written statement described by section 552.231(b) shall be provided to requestor if governmental body determines (1) responding to request for information will require programming or manipulation of data and (2) compliance with request is not feasible or will result in substantial interference with ongoing operations or that information could be made available in requested form only at costs that cover programming and manipulation). A governmental body that fails to follow the requirements of section 552.231 is not released by that section from its obligation to provide the requested information, or seek a ruling from this office as to whether the information is excepted from disclosure. See *Fish*, 31 S.W.3d at 682. Thus, the system's officer for public information carries the duty of promptly producing such public information when it is requested, unless the department wishes to withhold the information. Gov't Code §§ 552.203, .221. As you timely submitted a request for a ruling as to whether the requested information is excepted from disclosure, we will address your argument.

Section 552.101 of the Government Code protects from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 13 of article 6243n of Vernon's Texas Civil Statutes. You state the system was established under and is governed by article 6243n, which provides in part:

(a) Information contained in records that are in the custody of the retirement board or the system concerning an individual member, retiree, annuitant, beneficiary, or alternate payee is confidential under this section and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual or the individual's attorney, guardian, executor, administrator, conservator, or other person who the pension director determines is acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual if the pension director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(C) a governmental official or employee if the pension director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee;

(D) the individual's employer as defined in this Act; or

(E) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the pension director determines that the individual will have a reasonable opportunity to contest the subpoena.

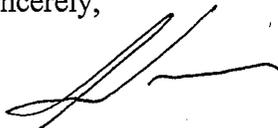
(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, beneficiary, or alternate payee of the retirement system.

V.T.C.S. art. 6243n, § 13(a)-(b). You state the request seeks more than the status or identity of a member, but asks for those members who qualify as the largest annual recipients of the system, as well as additional details about the members, including their titles and benefit amounts. You also state the requestor is not an individual who is entitled to the information under subsection (a)(1). Thus, because the request is for the top one-hundred largest annual recipients and not a request for the identities of system members only, we conclude the system must withhold the requested information under section 552.101 of the Government Code in conjunction with section 13 of article 6243n of Vernon's Texas Civil Statutes.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 404200

Enc. Submitted documents

c: Requestor
(w/o enclosures)