



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 28, 2010

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

OR2010-19395

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# 404197.

The City of Austin Employees' Retirement System (the "system") received a request for 1) a list of city employees who had retired from the City of Austin (the "city"), then were re-hired and are currently working for the city, 2) the last job each of those employees held when he retired, his final salary when he retired, and the date he retired, 3) the current job that each of the employees holds, the salary for that position, the date he began that job, and whether the city advertised the position or sought other applicants before filling it, and 4) the pension each of the employees is collecting. You claim that 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.<sup>1</sup>

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code protects from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 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 retirees who were rehired and currently work for the city in some capacity, as well as additional details about each retiree, such as final job with the city, final salary, date of retirement, and current pension. 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 members who retired and were then rehired and not a request for the identities of system members only, we conclude the system must withhold the submitted 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](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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/vb

Ref: ID# 404197

Enc. Submitted documents

c: Requestor  
(w/o enclosures)