



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 15, 2011

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

OR2011-03530

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# 411337.

The Teacher Retirement System of Texas ("TRS") received a request for responses to a questionnaire regarding "Political Contributions; Improper Influence; Placement Agents and Finders." You state that some of the requested information is the subject of previous open records letter rulings. You also state TRS has released some of the requested information. You claim that most of the submitted information is excepted from disclosure under section 552.143 of the Government Code. You also state you notified the interested third parties of TRS's receipt of the request for information and of the right of each third party to submit arguments to this office as to why the requested information should not be released to the requestor.<sup>1</sup> 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 circumstances). We have received comments from Brockton, Brookfield, CSFB, and Dimensional. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>You inform us that the third parties concerned are Artisan Partners, L.P.; Blackstone Real Estate Associates; Brandes Investment Partners; Brockton Capital L.L.P. ("Brockton"); Brookfield Asset Management ("Brookfield"); Credit Suisse First Boston ("CSFB"); D.E. Shaw Investment Management, L.L.C.; Dimensional Fund Advisors ("Dimensional"); Investcorp, L.L.C.; JP Morgan Investment Management; KKR Heford Co-Invest L.P.; Lion Capital; Longacre International, Ltd.; P2 Capital Partners, L.L.C.; Penn Capital Management; Principal Global Investors; USAA Real Estate Company; and Walker Smith Capital Management, L.P.

Initially, you state some of the submitted information is not responsive to the present request. We note the request seeks only the responses to the questionnaire. Thus, any information that does not consist of the requested responses to the questionnaire is not responsive to the present request. We also note some submitted information is not responsive to the request because it was created after the request was received. This ruling does not address the public availability of the non-responsive information, and TRS is not required to release non-responsive information in response to this request.

Next, you state that most of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2011-00552 (2011), 2010-13709 (2010), and 2010-10478 (2010). In the previous rulings, we concluded that TRS must withhold most of the information at issue under section 552.143 of the Government Code, but must release information not protected by section 552.143, including certain information encompassed by section 552.0225(b) of the Government Code. You state that there has been no change in the law, facts, and circumstances on which the previous rulings are based. We therefore conclude that TRS must dispose of the requested information encompassed by Open Records Letter Nos. 2011-00552, 2010-13709, and 2010-10478 in accordance with those previous rulings. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from the remaining third parties explaining why their submitted information should not be released. Therefore, we have no basis to conclude that these third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, TRS may not withhold any portion of the submitted information based upon the proprietary interests of the remaining third parties.

Next, we note, and TRS acknowledges, that some of the responsive submitted information is subject to section 552.0225 of the Government Code. Section 552.0225(b) provides in relevant part as follows:

(b) The following categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under [the Act]:

- (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;
- (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). Upon review, we find some of the responsive submitted information is subject to section 552.0225(b). TRS states it does not seek to withhold information subject to section 552.0225(b). Although we understand Brockton to claim section 552.110 of the Government Code for some of the information subject to section 552.0225(b), we note the exceptions to disclosure found in the Act do not apply to information that is made public by section 552.0225(b).<sup>2</sup> *Id.* § 552.0225(b); Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, TRS must release the information subject to subsection 552.0225(b).

TRS contends that the remaining responsive information is excepted from disclosure under section 552.143 of the Government Code. Section 552.143 provides in part:

(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 [required public disclosure].

Gov't Code § 552.143 (a). You state that TRS administers a pension trust fund under provisions of the constitution and statutes of the State of Texas. You explain that TRS's board of trustees adopted an Investment Policy Statement (the "statement") to provide a

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<sup>2</sup>Although Brockton also raises section 552.101 of the Government Code, the company has submitted no arguments in support of the applicability of this exception. Accordingly, this decision does not address Brockton's assertion of section 552.101, except to note that section 552.101 does not encompass other exceptions, such as section 552.110, in the Act. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

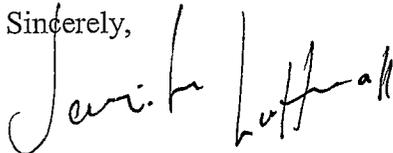
formal plan for investing pension fund assets, in order to achieve defined investment objectives consistent with TRS's mission statement and applicable law. You inform us that effective July 1, 2009, the board adopted an addendum to the statement (the "addendum") subtitled "Political Contributions; Improper Influence; Placement Agents and Finders." You explain that the purpose of the addendum is to ensure the integrity of all TRS investment transactions and conformity with the highest fiduciary, ethical and legal standards by all parties involved. You state that the addendum requires potential investment managers, as early as reasonably possible in the due diligence process, to provide detailed, written responses to a questionnaire attached to the addendum (the "questionnaire"). You contend that section 552.143(a) is applicable to the remaining information. You state that the remaining information in the questionnaires was provided by private investment funds and is maintained by TRS. Based on your representations, we conclude that TRS must withhold the remaining responsive information under section 552.143(a) of the Government Code.<sup>3</sup>

In summary, TRS must dispose of the requested information encompassed by Open Records Letter Nos. 2011-00552, 2010-13709, and 2010-10478 in accordance with those previous rulings. Except for the information that must be released pursuant to section 552.0225(b) of the Government Code, TRS must withhold the remaining responsive information under section 552.143(a) 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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure asserted by Brockton, Brookfield, CSFB, and Dimensional.

Ref: ID# 411337

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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