



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

**This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.**



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2011

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2011-07009

Dear Mr. Junnell:

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# 417940.

The Teacher Retirement System of Texas (the "system") received a request for two categories of information pertaining to individuals retiring in May 2010: (1) a list of the top ten average salaries that were used to compute retirement based on the average of the highest top three or five years of work history and (2) the corresponding annuity check amount for each of the ten. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 825.507 of the Government Code, which provides in relevant part:

(a) Records of a participant that are in the custody of [the system] or of an administrator, carrier, attorney, consultant, or governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure in a form that would identify an individual and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section . . . [.]

(b) [The system] may release records of a participant, including a participant to which Chapter 803 [of the Government Code] applies, to:

- (1) the participant or the participant's attorney or guardian or another person who the executive director determines is acting on behalf of the participant;
- (2) the executor or administrator of the deceased participant's estate, including information relating to the deceased participant's beneficiary;
- (3) a spouse or former spouse of the participant if the executive 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 [TRS];
- (4) an administrator, carrier, consultant, attorney, or agent acting on behalf of [the system];
- (5) a governmental entity, an employer, or the designated agent of an employer, only to the extent [the system] needs to share the information to perform the purposes of the [the system], as determined by the executive director;
- (6) a person authorized by the participant in writing to receive the information;
- (7) a federal, state, or local criminal law enforcement agency that requests a record for a law enforcement purpose;
- (8) the attorney general to the extent necessary to enforce child support; or
- (9) a party in response to a subpoena issued under applicable law if the executive director determines that the participant will have a reasonable opportunity to contest the subpoena.

....

(g) In this section, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of [the system].

Gov't Code § 825.507(a)-(b), (g). You assert that the submitted information would identify individual system participants, and, therefore, is confidential under section 825.507. You argue that the requestor could use the submitted information in conjunction with additional

information, research, and calculations to identify the participants to whom the submitted information relates. We note the submitted information merely depicts the top ten average salaries and their associated annuity check amounts. The submitted information does not contain and the requestor does not seek the identity of the system participants to whom this information pertains. Upon review, we conclude you have failed to demonstrate that the submitted information is in a form that would identify an individual system participant. Accordingly, we have no basis to conclude the information at issue is confidential under section 825.507 of the Government Code, and the system may not withhold it on that basis under section 552.101 of the Government Code.

Alternatively, you argue that section 825.507 of the Government Code excepts from disclosure all records of system participants regardless of whether the records identify an individual participant. Accordingly, you assert that the submitted information is confidential under section 825.507 because they are system participant records. Section 825.507(a) reads as follows:

(a) Records of a participant that are in the custody of [the system] or of an administrator, carrier, attorney, consultant, or governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure in a form that would identify an individual and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section . . . [.]

Id. § 825.507(a). Upon review of your arguments and the relevant statutory language, we conclude section 825.507 only makes confidential records of system participants that are in a form that would identify an individual participant. Accordingly, as the information at issue is not in a form that would identify individual system participants, the system may not withhold the submitted information under section 552.101 in conjunction with section 825.507 of the Government Code.

You also claim the submitted information is subject to common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision No. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See ORD 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure); see also Open Decision Nos. 545 (1990) (financial

information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common law privacy), 523 (1989). In this instance, we find the submitted information pertains to individuals who are not identified in the submitted information. Therefore, we find this information does not implicate any individual's privacy interest. Thus, the system may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions against disclosure of the submitted information, it must be released to the requestor.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 417940

Enc. Submitted documents

c: Requestor
(w/o enclosures)

CAUSE NO. D-1-GN-11-001626

TEACHER RETIREMENT SYSTEM
OF TEXAS,

Plaintiff,

v.

GREG ABBOTT, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL
OF THE STATE OF TEXAS,

Defendant.

20110425 10:57:57 AM

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JL APR 25 2012

At 8:57 AM

M.
Amalia Rodriguez-Mendoza, Clerk

AGREED ORDER OF DISMISSAL

On this day the Court considered the Agreed Motion to Dismiss of Plaintiff Teacher Retirement System of Texas ("TRS"), Intervenor Fort Worth Star-Telegram ("Star-Telegram"), and Defendant Greg Abbott, Attorney General of Texas ("Attorney General") (collectively the "Parties," severally a "Party") pursuant to TEXAS GOV'T CODE § 552.327.

WHEREAS, on November 29, 2011, Teacher Retirement System of Texas ("TRS") moved for Summary Judgment;

WHEREAS, the Court granted TRS' Motion for Summary Judgment, and signed a Final Judgment in this case, on January 23, 2012;

WHEREAS, the Court finds that on February 21, 2012, Star-Telegram timely filed its Motion for New Trial;

WHEREAS, the Court finds that, pursuant to Rule 329b(e) of the Texas Rules of Civil Procedure, on April 7, 2012, the Motion for New Trial was overruled by operation of law;

WHEREAS, the Court finds that, pursuant to Rule 329b(e) of the Texas Rules of Civil Procedure, the Court has plenary power to vacate, modify, correct or reform its judgment until thirty days after the Motion for New trial is overruled by operation of law;

AGREED ORDER OF DISMISSAL

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WHEREAS, the Court finds that Intervenor Fort Worth Star-Telegram has withdrawn its Texas Public Information Act request of February 28, 2011 ("TPIA request"), the TPIA request and OR2011-07009 being the basis of this dispute; and

WHEREAS, the Court finds that all Parties to this lawsuit have agreed to its dismissal and the Attorney General of Texas has represented to the Court that the requestor has voluntarily withdrawn the request for information in writing, the Court finds that the Parties' Agreed Motion to Dismiss should be **GRANTED**;

IT IS, THEREFORE

ORDERED that the Parties' Agreed Motion to Dismiss is hereby **GRANTED**;

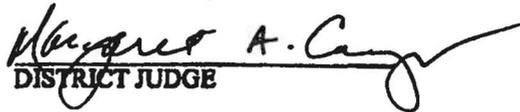
ORDERED that TRS may withhold the information at issue;

ORDERED that the Attorney General will add a notation on the Attorney General's website to Letter Ruling OR2011-07009 that reads, "This ruling has been modified by court action. The judgment can be viewed in PDF format here," and that includes a link to a PDF copy of OR2011-07009, a copy of this Order, and a notation that reads, "The ruling you have requested has been amended as a result of litigation and has been attached to this document."

ORDERED that Letter Ruling OR2011-07009 shall not be applied as a previous determination under section 552.301(f) of the Texas Government Code; and

ORDERED that this lawsuit is dismissed pursuant to TEXAS GOV'T CODE § 552.327, with each Party bearing its own costs and attorneys fees.

SIGNED this the 25 day of April, 2012.


DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:



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