



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 20, 2011

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

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2011-07180

Dear Ms. Soucy:

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# 418281 (Comptroller ID No. 7043376779).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for the number of named former state lawmakers who have received one or more state pensions checks since January 1, 2010, as well as the total pension amount paid to these individuals. You contend the comptroller is not required to comply with a portion of this request. You claim the remaining requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the Teacher Retirement System ("TRS"). See Gov't Code § 552.304 (providing that interested party may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 815.503 of the Government Code, which provides:

- (a) Records of members, annuitants, retirees, beneficiaries, and alternate payees under retirement plans administered by the [Employees] retirement system ["ERS"] that are in the custody of the system or of an administering firm, carrier, or other governmental agency acting in cooperation with or on

behalf of [ERS] are confidential and not subject to public disclosure, and [ERS], administering firm, carrier, or other governmental agency is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section.

...

(e) [ERS] has sole discretion in determining if a record is subject to this section. For purposes of this section, a record includes any identifying information about a person, living or deceased, who is or was a member, annuitant, retiree, beneficiary, or alternate payee, under any retirement plan or program administered by [ERS].

Id. § 815.503(a), (e). You state a portion of the requested information consists of ERS participant records maintained by the comptroller in cooperation with or on behalf of ERS. You explain that, in order to provide this information, the comptroller would have to access ERS information reflecting specific confidential ERS participant elections. You state ERS represents the information at issue is subject to section 815.503 of the Government Code. You assert that, pursuant to section 815.503(a) of the Government Code, the comptroller is not required to comply with the portion of the request that involves ERS records. Based on your representations, we agree section 815.503(a) is applicable in this instance and conclude the comptroller may decline to accept or comply with the portion of the request regarding the confidential ERS information and is not required to seek an opinion from our office.

Section 552.101 of the Government Code also encompasses section 825.507 of the Government Code, which provides in relevant part:

(a) Records of a participant that are in the custody of [TRS] or of an administrator, carrier, attorney, consultant, or governmental agency acting in cooperation with or on behalf of [TRS] 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.

...

(c) The records of a participant remain confidential after release to a person as authorized by this section. This section does not prevent the disclosure or confirmation, on an individual basis, of the status or identity of a participant as a member, former member, retiree, deceased member or retiree, beneficiary, or alternate payee of [TRS].

...

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

Id. § 825.507(a), (c), (g). You state the submitted information consists of records of participants in TRS that are in the custody of the comptroller in cooperation with TRS. TRS informs us the comptroller accessed TRS records in order to retrieve and assemble the submitted information. We note the submitted information consists of the total number of participants and the total pension amount received by these participants. The submitted information does not contain and the requestor does not seek the identity of these participants. TRS argues that release of the submitted information, in conjunction with additional research or public information requests, could allow the requestor to identify the participants to whom the TRS records belong. Having considered the submitted arguments, we find you and TRS have failed to demonstrate the information at issue is identifiable with a specific individual. *See A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995). Thus, the submitted information is not confidential under section 825.507 of the Government Code and may not be withheld under section 552.101 of the Government Code.¹

TRS also claims 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 comptroller may not withhold any of the submitted information under

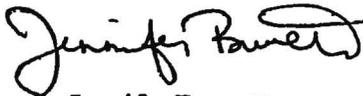
¹TRS also argues section 825.507 of the Government Code does not grant the comptroller authority to release the submitted information. However, we have determined section 825.507 does not make confidential the information at issue; thus, the release provisions of section 825.507 are inapplicable in this instance.

section 552.101 in conjunction with common-law privacy. As there are no further arguments 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 418281

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701
(w/o enclosures)

opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The Teacher Retirement System of Texas, Greg Abbott, the Attorney General of Texas and Susan Combs, Texas Comptroller of Public Accounts have agreed that in accordance with the PIA and under the facts presented, some of the information at issue, specifically, (1) the total number of individuals named in the Request who have received one or more state pension checks from TRS since 1/1/2010 (and who have thus been identified as TRS annuitants); and (2) the total pension amount collectively paid out to the TRS individuals named in the Request and identified as TRS annuitants as a group since 1/1/2010 are excepted from disclosure pursuant to Tex. Gov't Code § 552.0038;

2. The Texas Comptroller of Public Accounts must withhold the information at issue;

3. The Attorney General will add a notation on the Attorney General's website to Letter Ruling OR2011-07180 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 OR2011-07180, 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."

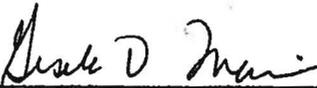
4. Letter Ruling OR2011-07180 is not a previous determination under section 552.301(f) of the Texas Government Code;

5. Each party will bear their own costs and attorney fees related to this litigation;

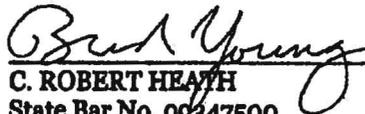
6. All relief not expressly granted is denied; and

7. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendants and is a final judgment.

SIGNED this the 3rd day of August, 2012.


PRESIDING JUDGE

APPROVED:



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