



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2011

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

OR2011-07888

Dear Mr. Junell:

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# 419517.

The Teacher Retirement System of Texas ("TRS") received a request for documents related to the Canyon Johnson Urban Fund III, LP ("CJUF"). You claim the information submitted in Exhibit 2 is subject to a previous determination of this office. You also claim most of the information submitted in Exhibits 1 through 7.2 is excepted from disclosure under sections 552.101, 552.104, and 552.143 of the Government Code. You also state release of portions of the submitted information may implicate the proprietary interests of CJUF. Thus, pursuant to section 552.305 of the Government Code, you notified CJUF of the request and of its right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the arguments submitted by TRS and CJUF and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You assert that some of the requested information is the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-06054 (2008). In that ruling, we concluded TRS must withhold the information now submitted in

Exhibit 2 under section 552.143(b) of the Government Code, but must release the portions of this information subject to section 552.0225(b) of the Government Code. You state that the law, facts, and circumstances on which Open Records Letter No. 2008-06054 was based have not changed. Accordingly, we conclude TRS must continue to rely on Open Records Letter No. 2008-06054 as a previous determination and withhold or release the information now submitted in Exhibit 2 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We consider the submitted arguments for the remaining information.

TRS acknowledges that some of the remaining information in Exhibits 1 through 7.2 is subject to section 552.0225 of the Government Code. Section 552.0225(b) provides 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). We agree that the types of information you have bracketed is subject to section 552.0225(b).¹ Because the exceptions to disclosure found in the Act do not apply to information that is made public by section 552.0225, *see id.*, the types of information you have bracketed may not be withheld on the basis of either the exceptions

¹You state that the information you have bracketed is a representative sample of the information that is deemed to be public under section 552.0225(b).

CJUF raises or the redactions TRS has made pursuant to section 552.024(c) of the Government Code. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information that statutes expressly make public), 525 (1989) (exceptions to disclosure do not apply to information made public by other statutes). CJUF additionally claims the information subject to section 552.0225(b) is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Therefore, TRS must release the types of information you have bracketed pursuant to section 552.0225(b) of the Government Code, but any information that is protected by copyright may only be released in accordance with copyright law.

You assert that the remaining information in Exhibits 1 through 7.2 is excepted under section 552.143 of the Government Code. Section 552.143 provides in part the following:

- (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 the requirements of Section 552.021.
- (b) Unless the information has been publicly released, pre- and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

Id. § 552.143(a), (b). You state that the remaining information in Exhibits 1 through 7.2 consists of information held by TRS that was prepared and/or provided by CJUF, a private investment fund. You also state this remaining information constitutes pre- and post-investment due diligence information about TRS's investments and proposed investments in CJUF. You inform us that the information you seek to withhold is not subject to section 552.0225(b) and has not been released. *See id.* § 552.0225(b). Based on your representations and our review of the information at issue, we agree that TRS must withhold the remaining information in Exhibits 1 through 7.2 under section 552.143 of the Government Code.²

²As we are able to make this determination, we need not address the remaining arguments submitted by TRS or CJUF.

In summary, TRS must continue to rely on Open Records Letter No. 2008-06054 as a previous determination and withhold or release the information now submitted in Exhibit 2 in accordance with that ruling. TRS must release the types of information you marked pursuant to section 552.0225(b) of the Government Code, but any information that is protected by copyright may only be released in accordance with copyright law. TRS must withhold the remaining submitted information under section 552.143 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, 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eb

Ref: ID# 419517

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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