



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2011

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

OR2011-15369

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# 433695.

The Teacher Retirement System of Texas (the "system") received a request for all information pertaining to investments with Bain Capital Partners, L.L.C. ("Bain"), that has previously been released to other requestors under the Act, including the names of the requestors, dates of the requests, and subjects of the requests.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.143(a) of the Government Code. You also inform us release of this information may implicate the proprietary interests of Bain. Accordingly, you notified Bain of the request for information and of the company's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (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

¹You inform us the system asked for and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

in certain circumstances). We have considered your arguments and reviewed the submitted information.

Initially, you have not submitted information responsive to the part of the request seeking the names of the requestors, dates of the requests, and subjects of the requests. To the extent the system maintains information responsive to this part of the request that existed on the date this request was received, we assume you have released it. If you have not released any such information, you must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that 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, Bain has not submitted comments to this office explaining why the submitted information should not be released. Therefore, we have no basis to conclude that Bain has 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, the system may not withhold any portion of the submitted information based upon the proprietary interests of Bain.

Next, you inform us the submitted information was previously released to another requestor pursuant to Open Records Letter No. 2002-6528 (2002). In Open Records Letter No. 2002-6528, we concluded the system must release its partnership agreement with Bain. However, you inform us the relevant law has changed since the issuance of this previous ruling. Section 552.143(a) of the Government Code, which addresses the confidentiality of information prepared or provided by a private investment fund and held by a governmental body, took effect on June 18, 2005.² Thus, because the law affecting the submitted information has changed, we agree the system may not rely upon our previous ruling as a previous determination, and we will address your arguments for the submitted information. *See* Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under section 552.301(a) of Government Code).

The system acknowledges that some of the submitted information is subject to section 552.0225(b) of the Government Code. This section provides as follows:

²*See* Gov't Code § 552.143(a); Act of May 18, 2005, 79th Leg., R.S., ch. 1338, § 2, 2005 Tex. Gen. Laws 4183, 4184.

(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. Upon review, we agree the information you have marked, and the additional information we have marked, is subject to section 552.0225(b). Therefore, the system must release this information pursuant to section 552.0225(b).

You assert that the remaining information is excepted from disclosure under section 552.143(a) of the Government Code. This section provides that “[a]ll information prepared or provided by a private investment fund and held by a governmental body that is not listed in [s]ection 552.0225(b) is confidential and excepted from the requirements of [s]ection 552.021.” *Id.* § 552.143 (a). You state the remaining information is held by the system and was prepared and provided by a private investment fund. You inform us this information is not subject to section 552.0225(b). *See id.* § 552.0225(b). Based on your representations and our review of the information at issue, we agree the system must withhold the remaining information under section 552.143(a) of the Government Code.³

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 433695

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Nathan Sanders
Bain Capital Partners, L.L.C.
111 Huntington Avenue
Boston, Massachusetts 02199
(w/o enclosures)