



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 8, 2011

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

OR2011-16454

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# 435598.

The Teacher Retirement System of Texas (the "system") received a request for all documents that mention Annandale Capital, L.L.C., Seay Stewardship and Investment Company, and a named individual (collectively, "Annandale") for a specified period of time. You state you have released some information to the requestor. You claim some of the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, 552.137, and 552.143 of the Government Code. You also inform us release of this information may implicate the proprietary interests of Annandale. Accordingly, you notified Annandale of the request for information and of the 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 in certain circumstances). We have received comments from Annandale. We have considered the submitted arguments and reviewed the submitted information.

The system and Annandale assert a portion of the submitted information is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical

possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The system argues that a portion of one of the submitted e-mails is not subject to the Act because it does not relate to system business and instead relates to a private individual. However, we note the e-mail at issue was sent to a system employee and is in the possession of the system, which is a governmental body as defined by section 552.003. Additionally, we find this e-mail was collected, assembled, or maintained in connection with the transaction of the system's official business. Therefore, we conclude that the portion of the e-mail at issue is subject to the Act and must be released, unless the system or Annandale demonstrates that the information falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302.

You assert some the submitted information is excepted from disclosure 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-investment 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 some of the submitted information consists of information held by the system that was prepared and provided by private investment funds. You inform us that the information you seek to withhold is not subject to section 552.0225(b). *See id.* § 552.0225(b) (listing categories of information held by governmental body relating to its investments that are public and not excepted from disclosure under the Act). Based on your representations and our review, we agree the system must withhold the information you have marked under section 552.143(a). You also state some of the remaining information consists of pre-investment due diligence information about the system's proposed investment opportunities. You inform us that the information at issue has not been released to the public. Based on your representations and our review of the information at issue, we agree that the system must withhold the remaining information you have marked under section 552.143(b) of the Government Code.<sup>1</sup>

As you acknowledge, the remaining information 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

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure for this information.

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.

In summary, the system must withhold the information you have marked under section 552.143 of the Government Code. The system must release the remaining information, but only in accordance with copyright law.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/agn

Ref: ID# 435598

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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Dallas, Texas 75201  
(w/o enclosures)