



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2012

Ms. Leena Chaphekar
Assistant General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2012-03683

Dear Ms. Chaphekar:

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# 448434.

The Employees Retirement System of Texas (the "ERS") received a nine-part request for information related to flexible spending accounts for a specified time period. You inform us some of the requested information either has been or will be released. You claim some of the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also believe some of the submitted information may implicate the proprietary interests of PayFlex Systems USA, Inc. ("PayFlex"). You state PayFlex was notified of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released.¹ We have reviewed the information you submitted.

We note an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from PayFlex. Therefore, because PayFlex has not demonstrated any of the information at issue is proprietary for purposes of the Act, the ERS may not withhold any of

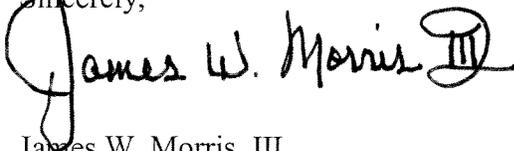
¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

the submitted information on the basis of any interest PayFlex may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990) (attorney general will accept private party's claim under statutory predecessor to Gov't Code § 552.110(a) as valid if party establishes *prima facie* case for exception and no one submits argument that rebuts claim as matter of law), 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). With respect to the ERS's claim under section 552.110 of the Government Code, we note section 552.110 protects the interests of private parties such as PayFlex, not those of governmental bodies such as the ERS. *See* ORD 552 at 5, 661 at 5-6. Thus, we do not address the ERS's arguments under section 552.110. Therefore, as the ERS claims no other exception to disclosure, the submitted information must be released.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looped initial "J" and a distinct "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 448434

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jeff Protector
PayFlex Systems USA, Inc.
10802 Farnam Drive, Suite 100
Omaha, Nebraska 68154
(w/o enclosures)