



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2012

Ms. Doreen E. McGookey  
General Counsel  
Fort Worth Employees' Retirement Fund  
3801 Hulen Street, Suite 101  
Fort Worth, Texas 76107

OR2012-08987

Dear Ms. McGookey:

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# 455950.

The Fort Worth Employees' Retirement Fund (the "fund") received a request for the fund's contracts with the investment managers for 24 specified investment funds. You claim the submitted information is excepted from disclosure pursuant to section 552.143 of the Government Code. In addition, you state release of the requested information may implicate the proprietary interests of certain third parties. You notified the third parties of this request for information and of their right to submit arguments to this office as to why the information should not be released.<sup>1</sup> *See* 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). We received correspondence from 3i Investments plc; American Securities Opportunities Advisors, LLC; Bay City; Brazos Equity Fund III, L.P.; Greenspring

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<sup>1</sup>The notified third parties are: 3i Investments plc; 2008 Riverside Capital Appreciation Fund V, L.P. ("Riverside"); American Securities Opportunities Advisors, LLC; Bay City Capital Fund V, L.P. ("Bay City"); Brazos Equity Fund III, L.P.; Cinven IV; Enhanced Equity Fund II; Greenspring Associates, Inc.; H.I.G. Bayside Debt & LBO Fund II; Ignition Ventures Management, LLC; Kelso Investment Associates; Littlejohn Fund IV; Madison Dearborn Capital Partners V; Marlin Equity III, L.P.; New Enterprise Associates XII; Providence Equity Partners L.L.C.; Scale Venture Partners III, L.P.; Texas Pacific Group Partners V; TPG Star; TSG Consumer Partners, LLC ("TSG"); Vector Fund IV; Veritas Capital Fund IV; Welsh Carson Anderson and Stowe XI; and Wynnchurch Capital Partners III.

Associates, Inc.; Ignition Ventures Management, LLC; Marlin Equity III, L.P.; Providence Equity Partners L.L.C.; Riverside; Scale Venture Partners III, L.P.; and TSG. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note some of the submitted information is not responsive to the instant request. You state, and provide documentation showing, the fund received clarification from the requestor regarding the requested information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). Based on the requestor's clarification, you state, and the submitted information reflects, the requestor withdrew his request for contracts with Hellman and Friedman. Accordingly, this information is not responsive to the instant request. The fund need not release nonresponsive information in response to this request, and this ruling will not address that information.

Bay City and Riverside assert the companies' information is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. "Public information" is defined as 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 in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Bay City and Riverside assert their information is not "public information" because the companies are private investment funds. However, upon review, we find the fund maintains the submitted information in connection with the transaction of official business by or for the fund. Accordingly, we conclude the submitted information is subject to the Act.

We understand 3i and TSG to argue the companies' information is confidential because it was submitted to the fund in confidence. We note information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W. 2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract,

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<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). Consequently, unless the information at issue comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

We note some of the submitted responsive information is subject to section 552.0225 of the Government Code. Section 552.0225(b) provides as follows:

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). The fund and some of the third parties argue the submitted information is excepted under section 552.143. In addition, some of third parties raise section 552.110 of the Government Code. However, the exceptions to disclosure found in the Act, including sections 552.110 and 552.143, do not apply to information that is made public by section 552.0225. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the types of information enumerated in section 552.0225(b) of the Government Code must be released to the requestor.

You argue the remaining responsive information is excepted from disclosure under section 552.143 of the Government Code, which provides, in part,

(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 [required public disclosure].

(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 [required public disclosure], except to the extent it is subject to disclosure under Subsection (c).

Gov't Code § 552.143 (a)-(b). You state the remaining information consists of information held by the fund that was prepared and/or provided by private investment funds. You also state the remaining information constitutes pre- and post-investment due diligence information about the fund's investments. Based on your representations and our review, we agree that, with the exception of information the fund must release pursuant to section 552.0225(b) of the Government Code, the fund must withhold the remaining responsive information under section 552.143 of the Government Code.<sup>3</sup>

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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining submitted arguments.

Ref: ID# 455950

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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American Securities Opportunities  
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Enhanced Equity Funds  
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Welsh, Carson, Anderson & Stowe  
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Ms. Bela R. Schwartz  
Vice President  
The Riverside Company  
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Scale Venture Partners III, L.P.  
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Brazos Equity Fund III, L.P.  
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