



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2012

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

OR2012-18670

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# 471711.

The Teacher Retirement System of Texas (the "system") received a request for information pertaining to three specified investment funds and all electronic messages sent or received from a named company, its affiliates, agents, or assigns during a specified period of time.¹ You state you have no information responsive to portions of the request.² You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.143 of the Government Code. You also inform us release of this information may implicate the proprietary interests of Walton Street Capital. Accordingly, you notified this company of the request for information and of its 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

¹You state, and provide documentation showing, the system sought and received clarification for the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify 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 over-broad 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).

²We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 Walton Street Capital. We have considered the submitted arguments and reviewed the submitted representative sample of information.³

Initially, you state some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2009-03330 (2009) and 2011-17199 (2011). In those rulings, we determined the system must withhold the responsive investment information under section 552.143 of the Government Code, with the exception of information that must be released pursuant to section 552.0225 of the Government Code. With regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior rulings, we conclude, as we have no indication the law, facts, or circumstances on which the prior rulings were based have changed, the system must continue to rely upon Open Records Letter Nos. 2009-03330 and 2011-17199 as previous determinations and withhold or release the identical information in accordance with those rulings. *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). You explain portions of the responsive information are not encompassed by the previous rulings. Therefore, we will address the submitted arguments for this information.

The system acknowledges some of the submitted 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;

³We 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 that those records contain substantially different types of information than that submitted to this office.

(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). You state the types of information you have marked are subject to section 552.0225(b) of the Government Code.⁴ The exceptions to disclosure found in the Act, including sections 552.104, 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). Therefore, the system must release the types of information you have marked pursuant to section 552.0225(b) of the Government Code.

You assert the remaining information is excepted from disclosure under section 552.143(a) 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).

Gov't Code § 552.143(a), (b). You state some of the remaining information consists of information held by the system that was prepared and/or provided by a private investment fund. You also state some of the remaining information constitutes pre- and post-investment due diligence information about the system's investments in Walton. You inform us 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, we agree, with the exception of the information subject to section 552.0225(b), the system must withhold the remaining information under section 552.143 of the Government Code.⁵

⁴You state the information you have marked is a representative sample of the information that is deemed public under section 552.0225(b).

⁵As our ruling is dispositive, we do not address your remaining arguments against disclosure.

In summary, the system must continue to rely upon Open Records Letter Nos. 2009-03330 and 2011-17199 as previous determinations and withhold or release any responsive information in accordance with those rulings. With the exception of the types of information you have marked pursuant to section 552.0225(b) of the Government Code, the system must withhold the remaining 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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

Ref: ID# 471711

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)