



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2014

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

OR2014-10757

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# 526714.

The Fort Worth Employees' Retirement Fund (the "fund") received a request for the most recent version of the contract governing the fund's investment in TSG 5, L.P. ("TSG 5"). You claim the submitted information is excepted from disclosure under section 552.143 of the Government Code. In addition, you state release of the submitted information may implicate the proprietary interests of TSG 5. Accordingly, you notified TSG 5 of this request for information and of its right to submit arguments to this office as to why the information should not be released. *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 have considered the exception you claim and reviewed the submitted information.

Initially, we note 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from TSG 5 explaining why the submitted information should not be released to the requestor. Therefore, we have no basis to conclude TSG 5 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 fund may not withhold the submitted information on the basis of any proprietary interest TSG 5 may have in the information.

We note 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;
- (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 argue the submitted information is excepted under section 552.143 of the Government Code. However, the exceptions to disclosure found in the Act, including section 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.

Section 552.143 of the Government Code 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 [required public disclosure].

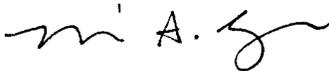
(b) Unless the information has been publicly released, pre-investment and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from [required public disclosure], except to the extent 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 provided by TSG 5, a private investment fund for purposes of section 552.143. *See id.* § 552.143(d)(1). Accordingly, 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 submitted 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 526714

Enc. Submitted documents

c: Requestor
(w/o enclosures)