ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 26, 2014

Mr. Gary B. Lawson
Counsel for the El Paso Firemen and Policemen's Pension Fund
Strasburger & Price LLP
901 Main Street, Suite 4400
Dallas, Texas 75202-3794

OR2014-21520

Dear Mr. Lawson:

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# 544877.

The El Paso Firemen and Policemen's Pension Fund (the "fund"), which you represent, received a request for any correspondence received during 2014 from any private equity manager that references any prospective or proposed amendment to any governing document of any private equity fund in which the fund is an investor. You claim the submitted information is excepted from disclosure under section 552.143 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Brazilian Private Equity Fund V, L.P. ("Brazilian"), Lexington Capital Partners VII, L.P. ("Lexington"), and Riverside Europe Fund IV, L.P. ("Riverside"). Accordingly, you state you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue 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 on behalf of Brazilian, Lexington, and Riverside. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state a portion of the submitted 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.

Next, we note Brazilian and Lexington claim portions of the remaining submitted information are not responsive to the instant request. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the fund has reviewed its records and determined the documents it has submitted are responsive to the request. Thus, we find the fund has made a good-faith effort to relate the request to information within its possession or control. Accordingly, we find the information at issue is responsive to the request and will determine whether the fund must release the information at issue to the requestor under the Act.

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

> (c) All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), (13)-(16) is confidential and excepted from the requirements of Section 552.021. This subsection does not apply to a governmental body's purchase, holding, or disposal of restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities.

Gov't Code § 552.143(c). You argue the responsive information pertains to the fund's direct purchase, holding, or disposal of restricted securities. *See id.* § 552.143(d)(3) (defining "restricted securities" for purposes of section 552.143); *see also* 17 C.F.R. § 230.144(a)(3) (defining "restricted securities" as "securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving public offering"). You inform us the responsive information relates to Brazilian, Lexington, Riverside, and Hancock Capital Partners V, L.P. You state these entities are limited partnerships that have not been registered with the United States Securities and Exchange Commission. You further indicate the fund has purchased restricted securities through each of these entities. You state these investments were not for purposes of reinvestment, and you inform us the purchases of these restricted securities did not involve a public offering. Thus, you argue the responsive information, which pertains to the fund's purchase, holding, or disposal of its limited partnership investment in the restricted securities at issue, is made confidential by section 552.143(c) of the Government Code. You further inform us no portion of the information at issue is subject to section 552.0225 of the Government Code. *See* Gov't Code § 552.0225(b) (listing categories of information held by a governmental body relating to its investments that are public and not excepted from disclosure under the Act). Based on your arguments and our review, we find the fund has demonstrated the

applicability of section 552.143(c) to the responsive information. Accordingly, the fund must withhold the responsive information under section 552.143(c) of the Government Code.[1]

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,

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/sdk

Ref: ID# 544877

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Bélla R. Schwartz
Vice President
The Riverside Company
630 Fifth Avenue, Suite 400
New York, New York 10111
(w/o enclosures)

Mr. Joseph M. McLaughlin
Counsel to Lexington Capital Partners VII
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017-3954
(w/o enclosures)

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[1]As our ruling is dispositive, we need not address the remaining arguments against disclosure of the information at issue.