



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2014

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

OR2014-21636

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# 544929.

The Fort Worth Employees' Retirement Fund (the "fund") received a request for all correspondence received from January 1, 2014 to the date of the request from any private equity manager that referenced 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.¹ You further state the proprietary interests of third parties may be implicated by the request. Accordingly, you state you notified the affected third parties of the request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of

¹You acknowledge the fund did not comply with section 552.301 of the Government Code in requesting a decision for some of the information at issue. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.143 of the Government Code and third party interests can both provide compelling reasons to overcome the presumption of openness, we will consider the applicability of the exception you claim and any third party arguments against the release of the information at issue. *See id.* §§ 552.007, .302, .352.

exception in certain circumstances). We have received arguments submitted by several third parties.² We have considered the submitted arguments and reviewed the submitted information.

Section 552.143 of the Government Code provides in relevant 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].

...

(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), or (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. This subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

Gov't Code § 552.143(a), (c). You argue the submitted 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 fund's investments in the private equity funds at issue were not made in the open market, and were not made for the purposes of reinvestment. Thus, you argue the submitted 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

²We have received arguments from the following third parties: Apollo Management VII, L.P.; Apollo Management VIII, L.P.; Avenue Europe Special Situations Fund II (Euro), L.P.; Brazos Equity Fund III, L.P.; Clearlake Capital Group, L.P.; Energy Capital Partners II, L.L.C.; Energy Capital Partners III, L.L.C.; Enhanced Management Company, L.L.C.; GI Partners Fund II, L.P.; Ignition Ventures Management, L.L.C.; JMI Equity; Kelso Investment Associates VIII, L.P.; Newport Global Advisors, L.P.; Riverside Capital Appreciation Fund V, L.P.; Scale Management, L.L.C.; Vector Capital IV, L.P.; Wynnchurch Partners III, L.P.

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 submitted information. Accordingly, the fund must withhold the submitted information under section 552.143(c) of the Government Code.³

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/eb

Ref: ID# 544929

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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³As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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