



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1995

Ms. Amy Nickell Jacobs
Haynes and Boone, L.L.P.
1300 Burnett Plaza
Fort Worth, Texas 76102-6866

OR95-699

Dear Ms. Jacobs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32100.

The City of Richardson (the "city") received a request for information regarding the amounts of the monthly pension benefits for the city manager, assistant city manager, and the managers of other departments of the city. You have submitted a Texas Municipal Retirement System ("TMRS") annual statement pertaining to one of the affected employees as a representative document responsive to this request. You claim that the requested information is excepted from disclosure by sections 552.101, 552.102, and 855.115 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that section 855.115 of the Government Code in conjunction with section 552.101, excepts the information from disclosure. Section 855.115, in pertinent part, states:

(a) Information contained in records that are in the custody of the retirement system concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 3(a)(1), Chapter 4242, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual or the individual's attorney, guardian, executor, administrator, conservator, or other person who the director determines is acting in the interest of the individual's estate;

(B) a spouse or former spouse of the individual after the director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(C) a governmental official or employee after the director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or

(D) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the director determines that the individual will have a reasonable opportunity to contest the subpoena.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the retirement system.

(c) The director may designate other employees of the retirement system to make the necessary determination under Subsection (a).

(d) A determination and disclosure under Subsection (a) may be made without notice to the individual member, retiree, annuitant, or beneficiary.

Although subsection (a) indicates that this provision applies to member information while in the custody of the retirement system, the remaining subsections outline the circumstances under which member information may be released. Because section 855.115 of the Government Code governs release of member information produced or provided by TMRS and the requestor is not authorized by statute to receive the TMRS member account statement provided as responsive to the request, you must not release the statement.¹

¹This ruling does not address whether other documents containing pension information that are held by the city and not obtained from TMRS, such as copies of employee pay statements and amounts withheld, are excepted from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LMM/rho

Ref.: ID# 32100

Enclosures: Submitted document

cc: Ms. Nita Berry
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Richardson, Texas 75080
(w/o enclosures)