



November 1, 2002

Ms. Paula A. Jones
General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2002-6246

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 171598.

The Employees Retirement System of Texas (the "ERS") received a request for information relating to a specific individual's participation in certain employee retirement and insurance plans. Additionally, the requestor seeks copies of all agency policies and procedures relating to participation in the insurance plan as well as, all documents relating to ERS' handling of this request. You state that you will release the master benefit plan documents for ERS' self-insured health benefits plans as well as, certificates of coverage for health maintenance organizations providing coverage in the Texas Employees Uniform Group Insurance Program ("UGIP"). You have also notified the requestor that ERS' rules and the applicable statutes are publicly available. You state that any information regarding how your agency handled this request would necessarily have been created after the request was received. Consequently, you assert, and we agree, that such information would not be responsive to this request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (Public Information Act does not require governmental body to disclose information that did not exist at time request was received). Finally, you claim that information responsive to the first item of the request is excepted from disclosure under sections 552.101, 552.109, 552.110, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample information.¹

¹We assume that the "sample" records submitted to this office are 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.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses confidentiality provisions such as section 815.503 of the Government Code. Section 815.503(a) of the Government Code provides that:

[r]ecords of members, annuitants, beneficiaries, and alternate payees under retirement plans administered by the retirement system that are in the custody of the system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this chapter.

Gov’t Code § 815.503; *see also* § 811.001(15) (defining “retirement system” as the ERS).

You explain that ERS administers retirement and employment related benefits for several classes of public servants, including elected officials. You further explain that Exhibits A-F are samples of ERS’ records related to the ERS member and UGIP participant who is the subject of this request. Based on your representations and our review of the exhibits, we agree that section 815.503 governs the release of this information. Since the requestor does not appear to be within the class of persons to whom ERS may release such information, we conclude that the requested benefit records are confidential under section 552.101 in conjunction with section 815.503(a) of the Government Code and must not be released. *See also* Gov’t Code § 815.503(b) (identifying those persons to whom benefit information may be released). As we are able to make a determination under section 552.101, we need not address your remaining claimed exceptions.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

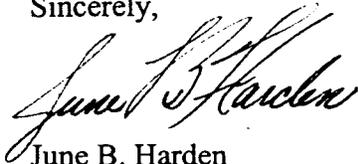
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 171598

Encl. Submitted documents

cc: Ms. Sara McCuiston
3502 Hollywood
Austin, Texas 78732
(w/o enclosures)