



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2005

Ms. Ruth H. Soucy
Manager and Legal Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2005-06095

Dear Ms. Soucy:

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# 226918.

The Comptroller of Public Accounts (the "comptroller") received a request for (1) information pertaining to individuals and companies with whom the comptroller has contracted to manage comptroller investments and (2) the latest four quarterly financial reports from Techxas Fund II L.P. (the "fund"). You state, and provide documentation showing, that you notified the fund of the comptroller's receipt of the request for information and of the fund's right to submit arguments to this office as to why the requested information should not be released to the requestor. *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). You state that some of the requested information has been released. You also indicate that the submitted information may be excepted under section 552.110, but take no position as to whether the information is excepted under that section. The fund asserts that some of the submitted information is not responsive to the request for information, and that the responsive information is excepted under sections 552.110 and 552.143 of the Government Code.¹ We have considered the

¹*See* Act of May 20, 2005, 79th Leg., R.S. S.B. 121, § 2, § 552.143 (to be codified at Tex. Gov't Code § 552.143).

submitted arguments and reviewed the submitted information. We have also considered comments submitted by the fund. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The fund asserts that the submitted October, 2003 quarterly report is not responsive to the request for information because the requestor asked for "reports for the last four quarters." We thus understand the requestor to imply that the three submitted reports for 2004 alone are responsive. We note that the requestor specifically requested "[t]he latest four quarterly financial reports for [the fund]," not just reports for the last four quarters. Accordingly, we find the submitted October, 2003 report to be responsive to the request for information.

Next, we note that some of the submitted information is subject to section 552.0225 of the Government Code.² Section 552.0225 provides in relevant part as follows:

(a) Under the fundamental philosophy of American government described by section 552.001, it is the policy of this state that investments of government are investments of and for the people and the people are entitled to information regarding those investments. The provisions of this section shall be liberally construed to implement this policy.

(b) The following categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under this chapter:

(1) the name of any fund or investment entity the governmental body is or has invested in;

...

(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;

...

²Added by Act of May 20, 2005, 79th Leg., R.S. S.B. 121, § 1, sec. 552.0225 (to be codified at Tex. Gov't Code § 552.0225).

(10) the names of the principals responsible for managing any fund or investment entity in which the governmental body is or has invested;

...

(12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity;

Gov't Code § 552.0225(a), (b)(1), (b)(7), (b)(8), (b)(10), (b)(12). We have marked information subject to section 552.0225.³ As noted above, the fund argues that the responsive information is excepted under sections 552.110 and 552.143.⁴ However, subsection 552.0225(b) provides that information subject to section 552.0225 is not excepted from disclosure under the Act. Accordingly, the comptroller may not withhold any information that is subject to section 552.0225 under section 552.110 or subsections 552.143(a) or 552.143(b) of the Government Code.

We have marked information under subsection 552.0225(b)(8) that the comptroller must release to the requestor if the information is an estimate of the value of the investment of Techxas Ventures in portfolio companies that had not had a terminal event at the time of the valuation. We have also marked information under subsections 552.0225(b)(7), (b)(10), and (b)(12) that the comptroller must release to the requestor.

The fund asserts that the remaining information not subject to section 552.0225 is excepted under section 552.143 of the Government Code. Section 552.143(a) provides that “[a]ll 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 the requirements of Section 552.021.” After review of the information at issue, we conclude that it consists of information prepared or provided by a private investment fund; therefore, the comptroller must withhold the remaining information under section 552.143.⁵

³We note that, in response to a request for additional information made by this office under section 552.303, the comptroller states that “the Trust Company generates an internal rate of return (“IRR”) *and* uses the calculation provided by Techxas Ventures, the general partner of the fund.” See Gov't Code § 552.0225(a)(7).

⁴We note that the fund submitted additional arguments after the comptroller responded to our request for additional information discussed above. See Gov't Code § 552.304. In its response, the fund asserts that some of the information subject to section 552.0225 consists of pre- and post-investment diligence information that is confidential under section 552.143(b) of the Government Code.

⁵As we are able to resolve this under section 552.143, we do not address your other argument under section 552.110 for exception of the remaining information.

Finally, we note that the information subject to section 552.0225 may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

To conclude, the comptroller must release (1) the information marked under subsection 552.0225(b)(8) if it is an estimate of the value of the investment of Techxas Ventures in portfolio companies that were active at the time of the valuation and (2) the information marked under subsections 552.0225(b)(7), (b)(10), and (b)(12); however, any copyrighted information may only be released in compliance with copyright law. The comptroller must withhold the remaining information under section 552.143.

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).

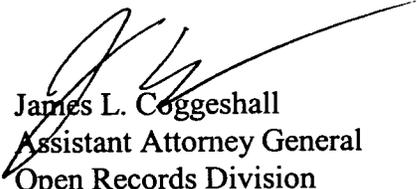
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. Dep't of Pub. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 226918

Enc. Submitted documents

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