



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 21, 2006

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

OR2006-02754

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 245188.

The Comptroller of Public Accounts (the "comptroller's office") received a request for

1. the names, titles, and classifications of employees who make at least \$65,000 a year;
2. the names and titles of employees responsive to item 1 who have retired, have been rehired, and are presently employed by the comptroller's office; and
3. the latest organizational chart by division, including the name of each employee in each position.

The comptroller's office has released items 1 and 3 but claims the information responsive to item 2 is excepted from disclosure under section 552.101 of the Government Code. This office also received arguments from the Employees Retirement System of Texas ("ERS"), in relation to the requested information. *See* Gov't Code § 552.304 (providing that interested party may submit written comments stating why information at issue in request for attorney general decision should or should not be released). We have considered the exception claimed and have reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 815.503 of the Government Code provides in pertinent part that the

[r]ecords of members, annuitants, retirees, 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 the retirement system is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section.

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

The comptroller’s office has submitted a list of names and titles, which it claims is confidential because it “maintains information regarding ERS retirees on behalf of ERS,” and it “is holding [the information] on behalf of ERS as an agent of that entity.” However, upon this office’s request for additional clarification as to whether the responsive information is found only in ERS’ records or whether the comptroller’s office independently maintains such information regarding its own employees in its own records, the comptroller’s office explains:

when an employee terminates from an agency, that employee may or may not advise the agency that the employee is retiring. Agencies for HR tracking purposes reflect employee separations under various termination codes. . . . For example, an employee may advise an agency that he or she is retiring when that employee is seeking retirement status, but the employee may not actually qualify for retirement. The agency will show a termination code that reflects that the employee has retired, but the actual status of that former employee can be verified only through reliance on ERS records.

Similarly, agencies may be able to compile a list of employees who appear to have met or exceeded retirement qualification through a combination of age and years of service. . . . The actual retirement status of agency employees can only be verified through reliance on ERS records.

ERS states it provides the comptroller’s office with a database comprised of confidential ERS participant records. ERS argues the information is confidential because in order to determine whether the information is responsive, the comptroller’s office would have to verify the status of its employees through ERS’ database.

Based on representations by the comptroller's office, it appears the comptroller's office may have its own records that are responsive to the request. Such records are not made confidential by section 815.503. The comptroller's office's use of ERS' database to verify whether its employee is a retiree does not make its own record containing such information confidential and subject to section 815.503. To the extent the comptroller's office maintains its own responsive information, the comptroller's office must release the information because it failed to submit the information as required by section 552.301(e) or as requested pursuant to section 552.303 of the Government Code. *See* Gov't Code §§ 552.301(e)(4) (governmental body is required to submit copy of specific information requested to this office within fifteen business days of receiving open records request), .303 (when attorney general notifies agency that additional information needs to be submitted, agency's failure to submit information results in presumption that such information is public). For any remaining information found only in ERS' records, we conclude such information constitutes records of retirees under retirement plans administered by ERS that are in the custody of the comptroller, a governmental agency acting in cooperation with ERS. Therefore, any such remaining information is confidential under section 815.503 and is excepted from disclosure under section 552.101 of the Government Code.

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).

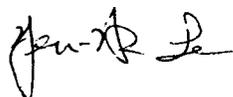
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *Texas 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 Office of the Attorney General 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. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 245188

Enc. Submitted documents

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