ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2007

Ms. Christi Worth
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2007-14898

Dear Ms. Worth:

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# 294553.

The Teacher Retirement System of Texas (the "system") received a request for the names, salaries, and bonus figures for the ten highest paid employees at the system. You state that on the date of the request, the system did not maintain any of the requested bonus figures.[1] You also state that the system has declined to respond to the employee questionnaire that the requestor submitted.[2] You assert that the submitted information is not subject to the Act. In the alternative, you claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the arguments and reviewed

[1]We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

[2]The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information.

the submitted information.[3] We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address your argument that the submitted information is not subject to the Act. The Act applies only to public information. *See* Gov't Code §§ 552.021, .221. Section 552.002(a) of the Act defines "public information" as information "collected, assembled, or maintained under a law or ordinance or in connection with transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). You argue that, pursuant to section 825.507 of the Government Code, the names and salary information pertaining to system employees who are also participants in the system's retirement program are not public information for the purposes of section 552.002. Section 825.507(a) of the Government Code provides in relevant part:

> (a) Records of a participant that are in the custody of the retirement system or of an administrator, carrier, attorney, consultant, or governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure in a form that would identify an individual and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section. Because the records described by this subsection are exempt from the public access provisions of Chapter 552, 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, except as otherwise provided by this section.
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> . . . .
>
> (g) In this section, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system.

Id. § 825.507(a), (g). In support of your position, you cite to *Houston Municipal Employees Pension System v. Abbott*, 192 S.W.2d 862 (Tex. App.—Texarkana 2006, pet. denied). In that case, the court concluded that pursuant to section 26 of article 6243h of Vernon's Texas Civil Statutes, the salaries of Houston Municipal Employees Pension System ("HMEPS") employees, who were also members of the HMEPS retirement program, are not public

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[3]We assume that the "representative sample" of records submitted to this office is 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.

information. *Id.* at 865, *see also* V.T.C.S. art. 6243h, § 26. The court in *Houston Municipal* was addressing a statute that explicitly states that records concerning a system member are not public information under the Act. *See id.* § 26(a) (stating "records that are in the custody of the pension system concerning an individual member...are not public information under the Act"). The system acknowledges that is not the case in this instance. Rather, in this instance, section 825.507(a) states only that "records of a participant that are in the custody of the retirement system or of an administrator, carrier, attorney, consultant, or governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure in a form that would identify an individual and are exempt from the public access provisions of Chapter 552." Thus, even if we accept your argument that the requested information constitutes participant records subject to section 825.507 and the information is not subject to the Act's public access provisions, you have failed to demonstrate how this language removes the information covered by section 825.507 from the scope of the Act's provision defining public information. *See* Gov't Code s 552.002(a).

Furthermore, in enacting the Act, the legislature specifically mandated that each government employee's salary is public information. *See* Gov't Code § 552.022(a)(2). This office has also held in numerous formal decisions and informal letter rulings that the salary information of pubic employees is public information. *See e.g.* Open Records Decision Nos. 602 at 5 (records related to salaries of those employees for whom the city pays a portion are subject to the Act), 342 at 3 (1982) (certain information about public employees, including position, experience, tenure, salary, and educational level, has long been held disclosable). Therefore, we conclude that the submitted names and salary information constitute public information that is subject to the Act, and may only be withheld if an exception to disclosure under the Act applies.

Next, you argue that the submitted names and salary information are confidential under section 552.101 of the Government Code in conjunction with section 825.507 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by statute. Section 825.507 makes confidential records of a participant in the system's retirement program that are in the system's custody. You contend that the submitted names and salary information are confidential because they constitute records of system employees who also happen to be participants in the system's retirement program. We disagree. In this instance, the names and salary information concern the system employees only in their capacity as employees. Thus, the names and salary information are the system's personnel or payroll records, rather than "records of a participant that are in the custody of the . . . system." Gov't Code § 825.507(a). You have not explained how the amount of a system employee's salary at a particular point are records of a participant in the system. Furthermore, these records do not pertain to a retiree or pension benefits. This office will not imply confidentiality where it is not expressly created by the language of the statute. *See* Open Records Decision Nos. 658 at 4 (1998), 649 at 3 (1996) (language of confidentiality provision controls scope of its

protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Therefore, having considered your arguments and reviewed the submitted information, we find that you have failed to establish that the names and salary information are confidential participant records subject to section 825.507 of the Government Code. Accordingly, section 552.101 is not applicable to this information, and, as you raise no other exception to disclosure of this information, it must be released to the requestor.

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).

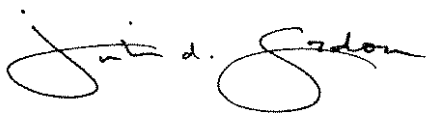
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Justin Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 294553

Enc. Submitted documents

c: Mr. Mark Lisheron
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(w/o enclosures)