

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2007

Ms. Deborah H. Loomis
Sedgwick, Detert, Morgan & Arnold, L.L.P.
919 Congress Ave, Suite 1250
Austin, Texas 78701-3656

OR2007-15398

Dear Ms. Loomis:

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# 295205.

The City of Austin Employees' Retirement System (the "system"), which you represent, received a request for twelve categories of information, including documents related to a named individual's appeal, contact information for current members and retirees of the system, and decisions relating to members' or retirees' benefits since 1995. You indicate that some of the requested information either has been or will be released. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the information you submitted.² We also have considered the comments that we received from the requestor.³

¹You also raise Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, which have been held to be other law that makes information expressly confidential for the purposes of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001); *see also* Gov't Code § 552.022(a) (providing that eighteen categories of information are subject to required public disclosure unless the information is expressly confidential under other law or subject to Gov't Code § 552.022(a)(1) and excepted from disclosure under Gov't Code § 552.108). Because section 552.022 is not applicable in this instance, we do not address Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5.

²This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the system to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

³*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Initially, we address your assertion, with regard to categories eight and nine of the request, that the system “does not have a document in existence that has this information.” We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism’d); Open Records Decision No. 452 at 3 (1986). Likewise, a governmental body is not required to produce the responsive information in the format requested, a list, or create new information to respond to the request for information. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681(Tex. App.—Eastland, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975). Nonetheless, a governmental body must make a good-faith effort to relate a request to information that is within the governmental body’s possession or control. See Open Records Decision No. 561 at 8-9 (1990). You state that the information at issue “could be downloaded from [the system’s] database.” However, the information at issue was not submitted to our office for review. Therefore, we assume that, to the extent this requested information existed when the system received the request for information, you have released it to the requestor. If not, then you must do so immediately. See Gov’t Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 13 of article 6243n of Vernon’s Texas Civil Statutes. You state that the system was established under and is governed by article 6243n, which provides in part:

(a) Information contained in records that are in the custody of the retirement board or the system concerning an individual member, retiree, annuitant, beneficiary, or alternate payee is confidential under this section 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 pension director determines is acting in the interest of the individual or the individual’s estate;

(B) a spouse or former spouse of the individual if the pension 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 if the pension director determines that disclosure of the information

requested is reasonably necessary to the performance of the duties of the official or employee;

(D) the individual's employer as defined in this Act; or

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

(2) the information is disclosed pursuant to a subpoena and the pension 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, beneficiary, or alternate payee of the retirement system.

V.T.C.S. art. 6243n, § 13(a)-(b). You do not indicate that the requestor is an individual who is entitled to the information under subsection (a)(1). Thus, based on your representations and our review of the information in question, we conclude that the system must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 13 of article 6243n of Vernon's Texas Civil Statutes.

In summary, the system must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 13 of article 6243n of Vernon's Texas Civil Statutes. To the extent information responsive to categories eight and nine of the request existed when the system received the request for information, and has not been released to the requestor, it must be released immediately. If you believe this information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. As this ruling is dispositive, we do not address any remaining arguments against disclosure.

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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/mcf

Ref: ID# 295205

Enc: Submitted documents

c: Ms. Tonia L. Lucio
Hance, Scarborough, Wright, Woodward & Weisbart
111 Congress Avenue, Suite 500
Austin, Texas 78701
(w/o enclosures)

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IT IS, THEREFORE, FURTHER ORDERED, ADJUDGED, AND DECREED that the names of all current members and current retirees of the City of Austin Employees Retirement System will be the only "list or other documents" that will be provided to Defendant Collins in response to request numbers eight and nine in his September 5, 2007, Public Information Act Request. Once Plaintiff provides the names as ordered herein, there will be no further action required by Plaintiff in response to request numbers eight and nine of Defendant Collins' September 5, 2007, request.

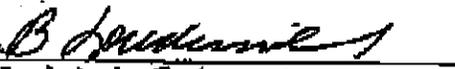
IT IS, THEREFORE, FURTHER ORDERED, ADJUDGED AND DECREED that all relief not specifically granted herein is denied.

SIGNED this 7 day of April, 2008.


DISTRICT JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE:


Michael Shandak, Attorney for Plaintiff, City of Austin Employees Retirement System


Brenda Loudermilk, Attorney for Defendant Greg Abbott, in his official capacity as Attorney General of Texas


Tonia L. Lacto, Attorney for Defendant, Peter Collins, real party interest