



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2007

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

OR2007-16375

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# 298653.

The Teacher Retirement System of Texas (the "system") received a request for (1) the chief system investor's salary; (2) salaries for investment staff by position and salary; (3) a list of any bonuses or incentives for the chief investor; (4) the name and qualifications of the chief investor; and (5) the names and addresses of the system's board members. You state that the system has released information that is responsive to parts 3, 4, and 5 of the request. You state that some of the requested information is the subject of previous open records letter rulings. You contend that the submitted information is not subject to the Act. You also claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered your arguments and reviewed the submitted information.

You state that some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2007-14898 (2007), 2007-15214 (2007), and 2007-16287 (2007). You do not indicate that there has been any change in the law, facts, and circumstances on which the previous rulings are based. Therefore, to the extent that the requested information is the subject of Open Records Letter Nos. 2007-14898, 2007-15214, and 2007-16287, the system must dispose of any such information in accordance with the previous rulings. *See* Gov't Code § 552.301(a); Open

Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). To the extent that the information at issue is not encompassed by the previous rulings, we will address your other arguments against disclosure.

Next, 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 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, information pertaining to employees of the system who are also participants in the system's retirement program is 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.

....

(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.3d 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, information relating to employees of the Houston Municipal Employees Pension System ("HMEPS") who were also members of the HMEPS retirement program is not public 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 that "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 [the Act].” Thus, even if we accept your argument that the submitted salary and bonus or incentive information constitutes participant records that are subject to section 825.507 and that 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 § 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 public 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 salary and bonus or incentive information constitutes public information that is subject to the Act and may only be withheld if an exception to disclosure under the Act applies.

You also contend that the submitted information is 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 that is 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 salary and bonus or incentive information is confidential because it constitutes records of system employees who also happen to be participants in the system’s retirement program. We disagree. We note that the submitted information consists of a list of investment staff job classifications and the corresponding monthly salaries for the positions and payout calculations for the incentive plan of the system’s chief investment officer. Only in the payout calculations for the chief investment officer’s incentive plan is any employee of the system specifically identified. Thus, the information at issue is 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 chief investment officer’s incentive plan payout or the list of job classifications and salaries 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 information at issue, we find that you have failed to establish that the submitted information consists of confidential participant records that are subject to section 825.507 of the Government Code. Therefore, the submitted information is not confidential under section 825.507 and may not be withheld from disclosure on that basis under section 552.101 of the Government Code.

You also raise section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses certain types of personal financial information. This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

As you note, this office has determined that a public employee's net salary is protected by common-law privacy. *See* Attorney General Opinion GA-0572 at 4 (2007) (stating that net salary necessarily involves disclosure of information about personal financial decisions). On the other hand, a public employee's gross salary is a matter of legitimate public interest and is therefore not protected by common-law privacy. *Id.*; *see also* Gov't Code § 552.022(a)(2); ORD 602 at 5, 342 at 3. As previously noted, most of the submitted information is contained in a list of investment staff job classifications and salaries that does not identify employees of the system by name. The remaining information consists of payout calculations for the chief investment officer's incentive plan. You do not indicate that any of the submitted information reveals the net salary of any particular employee of the system. We therefore conclude that the system may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also raise section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government

Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of an official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of an official or employee who did not timely request under section 552.024 that the information be kept confidential. None of the submitted information falls within the scope of section 552.117(a)(1) of the Government Code, and the system may not withhold any of the information under that exception.

In summary: (1) the system must dispose of any requested information that is the subject of Open Records Letter Nos. 2007-14898, 2007-15214, and 2007-16287 in accordance with those rulings; and (2) any submitted information that is not encompassed by the previous rulings is not excepted from disclosure and must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large loop at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 298653

Enc: Submitted documents

c: Dr. Robin Wuebker-Battershell
Superintendent of Schools
Salado Independent School District
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(w/o enclosures)