



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2009

Mr. Timothy P. Wei
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2009-15432

Dear Mr. Wei:

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# 359752.

The Teacher Retirement System (the "system") received a request for (1) information pertaining to debt securities issued by a specified company; (2) information pertaining to each asset-backed commercial paper and medium term note issued by any structured investment vehicle; and (3) information pertaining to the asset allocation and investment details regarding collateral investments in connection with the system's securities lending program. You state you have released some of the requested information. You also state you do not possess any information responsive to a portion of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.104, 552.110, 552.111, and 552.143 of the Government Code. You also claim release of a portion of the submitted information may implicate the proprietary interests of State Street Bank and Trust Co. ("State Street"). Accordingly, you state, and provide documentation showing, you notified State Street of the request and of the company's right to submit arguments to this office as to why the communications at issue should not be released.² See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining statutory predecessor to

¹We 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 dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²As of the date of this letter, we have not received comments from the third party.

section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note you have marked portions of the submitted information as not responsive to the request. This ruling does not address the public availability of non-responsive information, and the system is not required to release non-responsive information in response to this request.

You claim the submitted information is not subject to section 552.0225 of the Government Code. However, you state you have released the information subject to section 552.0225. Section 552.022(b) provides information held by a governmental body that relates to its investments are public information and may not be withheld under the Act if such information is within one of the enumerated sixteen categories of information. *See* Gov't Code § 552.0225(b). We note the submitted information contains information subject to section 552.0225. Although you raise sections 552.104, 552.110, 552.111, and 552.143 for this information, the exceptions to disclosure found in the Act do not apply to information that is made public by section 552.0225. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, you may not withhold the information subject to section 552.0225 under sections 552.104, 552.110, 552.111, or 552.143 of the Government Code and such information must be released.⁴ However, we will address your arguments against the disclosure of the remaining information not subject to section 552.0225.

You assert 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.” Gov't Code § 552.143(a). You state the remaining information consists of information prepared or provided by a private investment fund to the system. Based on your representation and our review of the information at issue, we agree

³We 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.

⁴A governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with Act does not determine availability of information). The fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Id.*; Open Records Decision No. 497 (1988).

that the system must withhold the remaining information not subject to section 552.0225 under section 552.143(a) of the Government Code.⁵

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#359752

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: State Street Bank and Trust Co.
State Street Financial Center
Attn: Securities Finances
TRS Client Services Officer
One Lincoln Street
Boston, Massachusetts 02111
(w/o enclosures)

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure.