



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2011

Mr. W. Montgomery Meitler
Assistant Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701

OR2011-00147

Dear Mr. Meitler:

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# 404992 (TEA PIR# 14149).

The Texas Education Agency (the "agency") received a request for a "list of all real estate funds that received [agency] funds, placement agents used by those real estate funds, and any fees paid to those agents" during a specified time period. You state the responsive information subject to section 552.0225(b) of the Government Code will be provided to the requestor.¹ You claim the submitted document is excepted from disclosure under section 552.143 of the Government Code. You also state release of the submitted document may implicate the proprietary interests of Mesa West Real Estate Income Fund II, L.P. ("Mesa West") and HFF Securities L.P. Thus, pursuant to section 552.305 of the Government Code, you notified these companies of the request and of their right to submit arguments to this office as to why the information at issue should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received comments from Mesa West. We have considered the submitted arguments and reviewed the submitted information.

¹Section 552.0225(b) makes expressly public sixteen categories of information related to a governmental body's investments. *See* Gov't Code § 552.0225(b).

The agency and Mesa West assert the submitted document is excepted from disclosure under section 552.143 of the Government Code, which provides:

(a) All 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.

(b) Unless the information has been publicly released, pre-investment and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

(c) All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), or (13)-(16) is confidential and excepted from the requirements of Section 552.021. This subsection does not apply to a governmental body's purchase, holding, or disposal of restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. This subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

(d) For the purposes of this chapter:

(1) "Private investment fund" means an entity, other than a governmental body, that issues restricted securities to a governmental body to evidence the investment of public funds for the purpose of reinvestment.

(2) "Reinvestment" means investment in a person that makes or will make other investments.

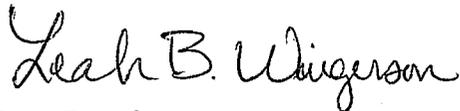
(3) "Restricted securities" has the meaning assigned by 17 C.F.R. Section 230.144(a)(3).

Gov't Code § 552.143 (a)-(d). You inform us the submitted document, which pertains to a placement agent fee disclosure, was provided to the agency by a private investment fund and is not the type of information expressly made public by section 552.0225(b) of the Government Code. Based on your representations and our review, we agree the submitted information is confidential and the agency must withhold it under section 552.143(a) of the Government Code.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 404992

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Bradford C. Stanley
Mayer Brown, L.L.P.
For Mesa West Real Estate Income Fund II, L.P.
71 South Wacker Drive
Chicago, Illinois 60606
(w/o enclosures)

Mr. Thomas J. Mizo
Senior Managing Director
HFF Securities, L.P.
10100 Santa Monica Boulevard, Suite 1400
Los Angeles, California 90067
(w/o enclosures)