



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2011

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2011-06225

Dear Ms. Soucy:

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# 416678 (Comptroller ID# 7000976581).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for five categories of information related to current and retired employees covered by the Employees Retirement System ("ERS") and the Teachers Retirement System ("TRS") during a specified period, and the total amount paid to pensioners by ERS and TRS during a specified period.¹ You state the comptroller has provided the requestor with aggregate information responsive to the second part of his request. You claim the comptroller may decline to comply with the first portion of the request seeking ERS information. You claim the remaining requested information pertaining to TRS is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.² We also have considered comments

¹ You state the comptroller sought and received clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

² We assume 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 those records contain substantially different types of information than those submitted to this office.

submitted by TRS. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 815.503 of the Government Code, which provides:

- (a) Records of members, annuitants, retirees, beneficiaries, and alternate payees under retirement plans administered by [ERS] that are in the custody of [ERS] or of an administering firm, carrier, or other governmental agency acting in cooperation with or on behalf of [ERS] are confidential and not subject to public disclosure, and [ERS], [the] administering firm, carrier, or governmental agency 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, because the records are exempt from the provisions of Chapter 552, except as otherwise provided by this section.

Gov't Code § 815.503(a). You state the comptroller maintains confidential ERS information regarding annuitants and retirees on behalf of ERS. You further state the requested information pertaining to ERS annuitants and retirees is information that was obtained from confidential ERS records and is maintained by the comptroller in cooperation with or on behalf of ERS. You assert that, pursuant to section 815.503(a), the comptroller is not required to comply with this portion of the request regarding the confidential ERS information. Based on your representations, we agree section 815.503(a) of the Government Code is applicable in this instance and conclude the comptroller may decline to accept or comply with the portion of the request regarding the confidential ERS information and is not required to seek an opinion from our office.

Section 552.101 also encompasses section 825.507 of the Government Code, which provides in part:

- (a) Records of a participant that are in the custody of [TRS] or of an administrator, carrier, attorney, consultant, or governmental agency acting in cooperation with or on behalf of [TRS] 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, [TRS] 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.

(b) [TRS] may release records of a participant, including a participant to which Chapter 803 [of the Government Code] applies, to:

(1) the participant or the participant's attorney or guardian or another person who the executive director determines is acting on behalf of the participant;

(2) the executor or administrator of the deceased participant's estate, including information relating to the deceased participant's beneficiary;

(3) a spouse or former spouse of the participant if the executive 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 [TRS];

(4) an administrator, carrier, consultant, attorney, or agent acting on behalf of [TRS];

(5) a governmental entity, an employer, or the designated agent of an employer, only to the extent [TRS] needs to share the information to perform the purposes of [TRS], as determined by the executive director;

(6) a person authorized by the participant in writing to receive the information;

(7) a federal, state, or local criminal law enforcement agency that requests a record for a law enforcement purpose;

(8) the attorney general to the extent necessary to enforce child support; or

(9) a party in response to a subpoena issued under applicable law if the executive director determines that the participant will have a reasonable opportunity to contest the subpoena.

...

(g) In this section, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of [TRS].

Id. § 825.507(a)–(b), (g). You state the requested information pertaining to individual TRS retirees is held by the comptroller on behalf of TRS. You also state that in order to identify TRS retirees who are currently employed by a state agency, the comptroller must obtain information from confidential TRS records. We note the requestor has not asserted any of the provisions of section 825.507(b) are applicable in this instance, nor has he provided any information that would allow the comptroller to determine that any of those provisions apply. *See id.* § 825.507(b). Upon review, we conclude the requested TRS information is confidential under section 825.507(a) of the Government Code and the comptroller must withhold it under section 552.101 of the Government Code.³

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,

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bs

Ref: ID# 416678

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As our ruling is dispositive, we do not address your remaining argument against disclosure.