



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2012

Mr. Dan Junell  
Assistant General Counsel  
Teacher Retirement System of Texas  
1000 Red River Street  
Austin, Texas 78701-2698

OR2012-05418A

Dear Mr. Junell:

This office issued Open Records Letter No. 2012-05418 (2012) on April 16, 2012. We have examined this ruling and determined that we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 16, 2012. Your request was assigned ID# 450718 (TRS ID# DMN 12-5).

The Teacher Retirement System of Texas (the "system") received a request for information pertaining to a specified addendum to the system's investment policy, as well as several specified reports.<sup>1</sup> You state the system has released some of the requested information. You state you have no information responsive to a portion of the request.<sup>2</sup> You claim some

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<sup>1</sup>You state the system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

of the submitted information is excepted from disclosure under section 552.143 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, you argue, and we agree, the Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Further, you state the system does not maintain information in the form requested by portions of the request. The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266; ORD 452 at 3. Likewise, a governmental body is not required to produce the responsive information in the format requested or create new information to respond to the request for information. *A&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 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, you have submitted information for our review. Thus, we find the system has made a good faith effort to locate any information responsive to this request. Accordingly, we will address your claimed exception for the submitted information.

Next, you state 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. 2010-10478 (2010), 2010-13709 (2010), and 2010-16857 (2010). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, the system must rely on Open Records Letter Nos. 2010-10478, 2010-13709, and 2010-16857 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your argument under section 552.143 of the Government Code for the submitted information, which you state is not subject to the previous determinations.

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<sup>3</sup>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 that submitted to this office.

The system acknowledges some of the submitted information is subject to section 552.0225 of the Government Code. Section 552.0225(b) provides as follows:

The following categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under [the Act]:

- (1) the name of any fund or investment entity the governmental body is or has invested in;
- (2) the date that a fund or investment entity described by Subdivision (1) was established;
- (3) each date the governmental body invested in a fund or investment entity described by Subdivision (1);
- (4) the amount of money, expressed in dollars, the governmental body has committed to a fund or investment entity;
- (5) the amount of money, expressed in dollars, the governmental body is investing or has invested in any fund or investment entity;
- (6) the total amount of money, expressed in dollars, the governmental body received from any fund or investment entity in connection with an investment;
- (7) the internal rate of return or other standard used by a governmental body in connection with each fund or investment entity it is or has invested in and the date on which the return or other standard was calculated;
- (8) the remaining value of any fund or investment entity the governmental body is or has invested in;
- (9) the total amount of fees, including expenses, charges, and other compensation, assessed against the governmental body by, or paid by the governmental body to, any fund or investment entity or principal of any fund or investment entity in which the governmental body is or has invested;
- (10) the names of the principals responsible for managing any fund or investment entity in which the governmental body is or has invested;

(11) each recusal filed by a member of the governing board in connection with a deliberation or action of the governmental body relating to an investment;

(12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity;

(13) the minutes and audio or video recordings of each open portion of a meeting of the governmental body at which an item described by this subsection was discussed;

(14) the governmental body's percentage ownership interest in a fund or investment entity the governmental body is or has invested in;

(15) any annual ethics disclosure report submitted to the governmental body by a fund or investment entity the governmental body is or has invested in; and

(16) the cash-on-cash return realized by the governmental body for a fund or investment entity the governmental body is or has invested in.

Gov't Code § 552.0225(b). We agree the types of information at issue, which you have indicated and a representative sample of which you have highlighted, are subject to section 552.0225(b) of the Government Code. The exceptions to disclosure found in the Act, including section 552.143, 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). Therefore, the system must release the types of information you have marked, and indicated, pursuant to section 552.0225(b) of the Government Code.

You argue the remaining information is excepted from disclosure under section 552.143 of the Government Code, which provides, in part,

(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 [required public disclosure].

(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 [required public disclosure], except to the extent it is subject to disclosure under Subsection (c).

Gov't Code § 552.143 (a)-(b). You inform us the system administers a pension trust fund under provisions of the constitution and statutes of the State of Texas. You explain the system's board of trustees (the "board") adopted an Investment Policy Statement (the "statement") to provide a formal plan for investing pension fund assets, in order to achieve defined investment objectives consistent with the system's mission statement and applicable law. You state effective July 1, 2009, the board adopted an addendum to the statement (the "addendum") subtitled "Political Contributions; Improper Influence; Placement Agents and Finders." You explain the purpose of the addendum is to ensure the integrity of all of the system's investment transactions and conformity with the highest fiduciary, ethical and legal standards by all parties involved. You state the addendum requires potential investment managers, as early as reasonably possible in the due diligence process, to provide detailed, written responses to a questionnaire attached to the addendum (the "questionnaire").

You contend with the exception of the information subject to section 552.0225(b) of the Government Code, section 552.143 is applicable to the information in the submitted questionnaires. You state the remaining information in the submitted questionnaires is used to ensure the integrity of the system's pre- and post-investment due diligence regarding its investments and potential investments. You also inform us the submitted questionnaires have not been publicly released. Accordingly, we find the system must withhold the remaining information in the submitted questionnaires under section 552.143 of the Government Code.

Additionally, you argue section 552.143 of the Government Code is applicable to the remaining submitted information. You inform us the remaining documents contain information prepared and maintained by the system before and after investment or a decision not to invest, which was gathered from private investment funds and contains reviews and analysis of investment information. You state this information constitutes diligence information the system maintains and uses to implement its investment responsibilities and duties. You inform us a portion of this information consists of reports maintained by the system as post-investment diligence information. You explain the reports include pre-investment diligence information that was provided by private investment funds and external separate account managers. Because you explain the reports are maintained by the system as post-investment diligence information, we find they fall within subsection 552.143(b). Section 552.143(b) states unless information has been publicly released, post-diligence information is confidential. *See* Gov't Code § 552.143(b). You inform us the reports at issue have been previously released to the public. The information that has been publicly released may not now be withheld under section 552.143 of the Government Code. However, based on your representations and our review, with the exception of information the system must release pursuant to section 552.0225(b) of the Government Code, the system must withhold the remaining information under section 552.143 of the Government Code.

In summary, the system must rely on Open Records Letter Nos. 2010-10478, 2010-13709, and 2010-16857 as previous determinations and withhold or release the identical information

in accordance with those rulings. With the exception of information the system must release pursuant to section 552.0225(b) of the Government Code, which you have indicated and a representative sample of which you have highlighted, and the information that has been previously released to the public, the system must withhold the submitted information under section 552.143 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 450718

Enc. Submitted documents

c: Requestor  
(w/o enclosures)