



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2013

Mr. Gary B. Lawson
Counsel for the Dallas Police and Fire Pension System
Strasburger
901 Main Street, Suite 4400
Dallas, Texas 75202-3794

OR2013-06830

Dear Mr. Lawson:

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# 485442.

The Dallas Police and Fire Pension System (the "system"), which you represent, received a request for correspondence sent during a specified time period between a named individual and a specified entity that include any of five specified keywords. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.104, 552.110, and 552.143 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the system received the request for information. This ruling does not address the public availability of

¹Although you also mark some of the submitted information under sections 552.103, 552.107, and 552.111 of the Government Code and under rule 503 of the Texas Rules of Evidence and rules 192.3 and 192.5 of the Texas Rules of Civil Procedure, you have provide no arguments explaining how these exceptions and rules are applicable to the information at issue. Therefore, we assume you no longer assert these exceptions and rules. *See* Gov't Code §§ 552.301(e)(1)(A), .302. Further, although you also raise section 552.022 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022.

any information that is not responsive to the request and the system is not required to release such information in response to this request.

Next, you indicate some of the responsive information is subject to section 552.0225 of the Government Code. Section 552.0225(b) provides, in relevant part, 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]:

...

(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;

...

(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;

...

(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)(2)-(9), (11), (13)-(16). The exceptions to disclosure found in the Act, including sections 552.104, 552.110, and 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 those portions of the responsive information that are subject to the relevant portions of section 552.0225(b) of the Government Code.

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

(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), (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.

Gov't Code § 552.143(c). You argue the information at issue, which you have marked, pertains to the system's direct purchase, holding, or disposal of restricted securities. *See id.* § 552.143(d)(3) (defining "restricted securities" for purposes of section 552.143); *see also* 17 C.F.R. § 230.144(a)(3) (defining "restricted securities" as "securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving public offering"). You inform us the information at issue consists of a report that was prepared from information obtained from one of your client's real estate investment managers, which are not governmental bodies. You state the system has invested

in the restricted securities at issue and the system's investment was not for reinvestment. Based on your representations and our review, we find the system has demonstrated the applicability of section 552.143(c) to some of the information at issue. However, we find the system has failed to demonstrate how some of the information you marked pertains to the system's direct purchase, holding, or disposal of a restricted security. Accordingly, this information, which we marked for release, may not be withheld under section 552.143 of the Government Code. Thus, with the exception of the information we marked for release and the information the system must release pursuant to subsections 552.0225(b)(2)-(9), (11), and (13)-(16) of the Government Code, the system must withhold the information you marked under section 552.143(c) of the Government Code.²

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has concluded other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). Upon review, we find no portion of the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the information at issue may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we find no portion of the remaining responsive information is subject to section 552.102(a) of the Government Code, and the system may not withhold any of the remaining information on that basis.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue.

We note the remaining information contains e-mail addresses that may be subject to section 552.137 of the Government Code.³ Section 552.137 provides in part:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

...

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract;

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public; or

(5) provided to a governmental body for the purposes of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of this code, or receiving orders or decisions from a governmental body.

Gov't Code § 552.137(a), (c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs affirmatively consents to its public disclosure. *See id.* § 552.137(b). Because we are unable to determine whether the e-mail addresses at issue, which we have marked, fall within the scope of section 552.137(c), we must rule

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

conditionally. To the extent the e-mail addresses we marked belong to members of the public, the system must withhold the marked e-mail addresses under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See id.* § 552.137(b). However, to the extent the marked e-mail addresses are excluded by subsection 552.137(c), they may not be withheld under section 552.137 of the Government Code.

In summary, with the exception of the information we marked for release and the information the system must release pursuant to subsections 552.0225(b)(2)-(9), (11), and (13)-(16) of the Government Code, the system must withhold the information you marked under section 552.143(c) of the Government Code. To the extent the e-mail addresses we marked belong to members of the public, the system must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. The system must release the remaining information.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 485442

Enc. Submitted documents

c: Requestor
(w/o enclosures)