



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2013

Mr. Thomas H. Walston
General Counsel
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

OR2013-19711

Dear Mr. Walston:

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# 505414.

The State Office of Administrative Hearings (the "office") received a request for four categories of information regarding non-occupational disability retirement benefits pertaining to Fibromyalgia claimants.¹ You state you do not have any responsive information to the third and fourth categories of the request.² You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the Employees Retirement System of Texas ("ERS"). *See* Gov't

¹You state the office sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that 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 governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Code § 552.304 (interested party may submit comments stating why information 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 of the Government Code encompasses section 815.503(a) of the Government Code, which provides as follows:

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

Id. § 815.503(a); *see also id.* § 811.001(15) (defining “retirement system” as ERS). You state the submitted information consists of proposals for decisions resulting from contested case hearings conducted by the office on behalf of ERS, and ERS did not adopt the proposals under a final order. The ERS informs us the information at issue is subject to section 815.503 of the Government Code. We understand the office is a governmental agency acting in cooperation with or on behalf of ERS. You assert that, pursuant to section 815.503(a) of the Government Code, the office is not required to comply with the portion of the request that involves ERS records. Based on your representations, we agree section 815.503(a) is applicable in this instance and conclude the office 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.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.texasattorneygeneral.gov/open_orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³As our ruling on this issue is dispositive, we need not address any remaining arguments.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Britni Fabian". The signature is written in a cursive, flowing style.

Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 505414

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Leena Chaphekar
Assistant General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207
(w/o enclosures)