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January 15, 2014

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

OR2014-00957

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# 511060 (DPFPS Ref. "One Degree October 2012 Payment Request").

The Dallas Police & Fire Pension System (the "system"), which you represent, received a request for all records of payment made to One Degree, L.L.C. ("One Degree") for work performed during October 2012 on behalf of the system, excluding any bank account and credit card numbers. You claim the submitted information is excepted from disclosure under sections 552.103, 552.136, 552.143 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically excludes bank account and credit card numbers from his request for information. Therefore, those types of information, which we have marked, are not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the system need not release such information in response to this request.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides for the required public disclosure of "information in an account, voucher, or contract relating to the receipt of expenditure of public or other funds by a governmental body[.]" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(3). The submitted invoice from and check to One Degree are subject to section 552.022(a)(3) and must be released unless they are confidential under the

Act or other law. Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Therefore, the system may not withhold the responsive information under section 552.103. However, sections 552.136 and 552.143 of the Government Code do make information confidential under the Act. As such, we will address the applicability of sections 552.136 and 552.143 to the responsive information.

Section 552.143(c) of the Government Code provides the following:

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 contend the submitted information pertains to the system's direct purchase, holding, or disposal of a restricted security. *See id.* § 552.143(d)(3) (defining "restricted securities" for purposes of section 552.143). Upon review, we find you have failed to demonstrate how any of the submitted information, which pertains to compensation for consulting services provided by One Degree, is information regarding the system's direct purchase, holding, or disposal of a restricted security. Accordingly, the system may not withhold the responsive information under section 552.143(c).

You indicate the system will redact the responsive information you have marked pursuant to section 552.136(c) of the Government Code.¹ However, you have marked information that is not subject to section 552.136; thus, we will address the applicability of this exception to the responsive information you have marked. Section 552.136, in pertinent part, states the following:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or

¹Section 552.136(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described in section 552.136(b). Gov't Code § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor).

instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

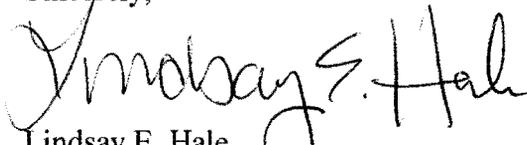
(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Id. § 552.136(a)-(b). You have marked a check number and bank routing number for withholding under section 552.136. Upon review, we conclude, the system must withhold the responsive bank routing number we have marked under section 552.136. However, we find you have not explained how the responsive check number you have marked consists of a credit card, debit card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), 301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find you have failed to demonstrate the applicability of section 552.136 to the check number and the system may not withhold it on this basis. The system must release the remaining responsive 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.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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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Ref: ID# 511060

Enc. Submitted documents

c: Requestor
(w/o enclosures)