



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2014

Mr. Erik T. Dahler
General Counsel
San Antonio Fire and Police Pension Fund
11603 West Coker Loop, Suite 201
San Antonio, Texas 78216

OR2014-03509

Dear Mr. Dahler:

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# 515225.

The San Antonio Fire and Police Pension Fund (the "fund") received a request for all pitchbooks, board presentations, staff recommendations, and consultant's recommendations related to three specified private equity real estate funds. You state you have released information subject to section 552.0225 of the Government Code. You claim the remaining submitted information is excepted from disclosure under section 552.143 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Noble Investment Group ("Noble"), Rockpoint Group ("Rockpoint"), and Townsend Group ("Townsend"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Noble, Rockpoint, and Townsend. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information and the submitted arguments.

Section 552.143 of the Government Code provides in relevant part the following:

(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 the requirements of Section 552.021.

(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 the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

Gov't Code § 552.143(a)-(b). You state the information you have indicated consists of pre-investment due diligence information prepared by the fund or a private investment fund, and this information is not subject to subsection 552.143(c) of the Government Code. However, the requestor contends the information at issue has been publicly released and, consequently, may not be withheld under section 552.143. *See id.* § 552.143(b). The fund represents the information at issue has not been publicly released. Whether the information at issue has been released to the public is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986).* Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *Id.* Accordingly, based on the fund's representations and our review, we agree section 552.143(b) of the Government Code is applicable to the information you have indicated. You state the remaining information consists of information prepared by or received from a private investment fund. *See id.* § 552.143(a). Based on your representation and our review, we find section 552.143(a) of the Government Code is applicable to the remaining information. Thus, the fund must withhold the submitted information under section 552.143 of the Government Code.¹

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

¹As our ruling is dispositive for the submitted information, we need not consider the remaining arguments against its disclosure.

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

Sincerely,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 515225

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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