



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2014

Ms. Melanie J. Rodney
Assistant County Attorney
Harris County Hospital District
2525 Holly Hall, Suite 190
Houston, Texas 77054

OR2014-15767

Dear Ms. Rodney:

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# 535444 (CA File No. 14HSP0499).

The Harris County Hospital District d/b/a Harris Health System (the "system") received a request for "the most recent" quarterly investment review provided by Hewitt EnnisKnupp, Inc. ("HEK").¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of HEK. Accordingly, you state, and provide documentation showing, you notified HEK of the request for information and of its 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 HEK. We have considered the submitted arguments and reviewed the submitted information.

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

¹We note the system asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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). HEK argues some of its submitted information is excepted under sections 552.110 and 552.143 of the Government Code. However, the exceptions to disclosure found in the Act, including sections 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). Accordingly, the types of information enumerated in section 552.0225(b) of the Government Code must be released to the requestor.

Section 552.143 provides, in 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). HEK informs us it is an investment consulting firm hired by the system to provide investment consulting services to the system regarding the system's Defined Benefit Pension Plan (the "plan"). HEK states the submitted information consists

of HEK's quarterly review and analysis of investments made on behalf of the system. HEK also states some of the information at issue consists of pre-investment and post-investment due diligence information prepared by HEK for the system and contains HEK's overall observations and recommendations to the system on the investment management of the plan. We understand this information is not subject to disclosure pursuant to subsection 552.143(c) of the Government Code.

Based on these representations and our review, we find HEK has demonstrated the applicability of section 552.143(b) to the information at issue. Thus, with the exception of information the system must release pursuant to section 552.0225(b), the system must withhold the information at issue, which we have marked, under section 552.143(b) of the Government Code.² 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.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 535444

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address HEK's remaining arguments against disclosure.

Ms. Tracy N. LeRoy
Counsel for Hewitt EnnisKnupp, Inc.
Sidley Austin, L.L.P.
1000 Louisiana Street, Suite 6000
Houston, Texas 77002
(w/o enclosures)