



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 21, 2014

Ms. Doreen E. McGookey  
General Counsel  
Fort Worth Employees' Retirement Fund  
3801 Hulen Street, Suite 101  
Fort Worth, Texas 76107

OR2014-21286

Dear Ms. McGookey:

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# 543987.

The Fort Worth Employees' Retirement Fund (the "fund") received two requests from different requestors for any records containing disclosures to the fund during a specified time period by any private equity manager with whom the fund does business pertaining to (1) interactions by the equity manager or its affiliates with the United States Securities and Exchange Commission, the Internal Revenue Service, or any state or local tax authorities; and (2) fee or expense reimbursement practices of the equity manager.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.143 of the Government Code.<sup>2</sup> You further state the proprietary interests of third parties may be

---

<sup>1</sup>We note the fund sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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 a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>We note the fund did not comply with section 552.301 of the Government Code in requesting this decision for some of the information at issue. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.143 of the Government Code and third party interests can both provide compelling reasons to overcome the presumption of openness, we will consider the applicability of section 552.143 and any third party arguments against the release of the submitted information. *See id.* §§ 552.007, .302, .352.

implicated by the request. Accordingly, you state you notified the affected third parties of the request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments submitted by several third parties.<sup>3</sup> We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>4</sup>

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have received arguments from only the third parties listed above. Thus, any remaining third parties have not demonstrated they have protected proprietary interests in the requested information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the fund may not withhold the information at issue on the basis of any proprietary interest any remaining third parties may have in the information.

Next, you acknowledge some of the information at issue may be subject to section 552.0225 of the Government Code. Section 552.0225(b) provides 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]:

- (1) the name of any fund or investment entity the governmental body is or has invested in;

---

<sup>3</sup>We have received arguments from the following third parties: Apollo Management VII, L.P.; Avenue Capital Group; Brazos Equity Fund III, L.P.; Clearlake Capital Group, L.P.; Energy Capital Partners; Energy Capital Partners III, L.L.C.; Enhanced Management Company, L.L.C.; GI Partners, L.P.; Ignition Ventures Management, L.L.C.; JMI Equity; Kelso and Company, L.P.; Landmark Equity Advisors, L.L.C.; Newport Global Advisors, L.P.; Riverside Partners L.L.C.; Scale Management, L.L.C.; TPG Global, L.L.C.; Vector Capital, L.L.C.; Veritas Capital Fund IV, L.P.; Veritas Capital Fund V, L.P.; and Wynnchurch Capital, Ltd.

<sup>4</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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). You indicate the information at issue may contain information subject to section 552.0225(b) of the Government Code. 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). Therefore, the fund must release those portions of the information at issue that are subject to section 552.0225(b) of the Government Code.

You argue the remaining information is excepted from disclosure under section 552.143 of the Government Code, which provides, in relevant part:

(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 [required public disclosure].

(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 [required public disclosure], except to the extent it is subject to disclosure under Subsection (c).

Gov't Code § 552.143(a)-(b). You state the remaining information consists of information held by the fund that was provided by private investment funds for purposes of section 552.143. *See id.* § 552.143(d)(1). Accordingly, based on your representations and our review, we agree that, with the exception of information the fund must release pursuant to section 552.0225(b) of the Government Code, the fund must withhold the remaining information under section 552.143 of the Government Code.<sup>5</sup>

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.

---

<sup>5</sup>As our ruling is dispositive, we do not address the remaining arguments against disclosure of the requested information.

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](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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 543987

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Kathy Fields  
General Counsel  
JMI Equity  
100 International Drive, Suite 19100  
Baltimore, Maryland 21202  
(w/o enclosures)

Mr. John A. Hatherly  
Director  
Wynnchurch Partners III, L.P.  
6250 North River Road, Suite 10-100  
Rosemont, Illinois 60018  
(w/o enclosures)

Mr. Marc A. Fuller  
Counsel for Brazos Equity  
Fund III, L.P.  
Vinson & Elkins, LLP  
2001 Ross Avenue, Suite 3700  
Dallas, Texas 75201-2975  
(w/o enclosures)

Mr. Mary B. Kuusisto  
Counsel for Scale III  
Proskauer Rose, LLP  
One International Place  
Boston, Massachusetts 02110-2600  
(w/o enclosures)

Mr. David A. Smolen  
General Counsel  
GI Partners Fund II, L.P.  
188 The Embarcadero, Suite 700  
San Francisco, California 94105  
(w/o enclosures)

Mr. Béla R. Schwartz  
Vice President  
The Riverside Company  
630 Fifth Avenue, Suite 400  
New York, New York 10111  
(w/o enclosures)

Mr. Todd Greenbarg  
Avenue Capital Group  
399 Park Avenue, 6<sup>th</sup> Floor  
New York, New York 10022  
(w/o enclosures)

Mr. Andrew D. Singer  
Managing Member  
Energy Capital Partners  
51 JFK Parkway, Suite 200  
Short Hills, New Jersey 07078  
(w/o enclosures)

Mr. Roger A. May  
Newport Global Advisors  
21 Waterway Avenue, Suite 150  
The Woodlands, Texas 77380  
(w/o enclosures)

Ms. Victoria Konfong  
Chief Compliance Officer  
Enhanced Management Company, LLC  
601 Lexington Avenue, 55<sup>th</sup> Floor  
New York, New York 10022  
(w/o enclosures)

Mr. Ronald Cami  
Vice President  
TPG Global, LLC  
301 Commerce Street, Suite 3300  
Fort Worth, Texas 76102  
(w/o enclosures)

Ms. Jennifer R. Cowan  
Counsel for Kelso & Company, L.P.  
Debevoise & Plimpton, LLP  
919 Third Avenue  
New York, New York 10022  
(w/o enclosures)

Mr. David Baylor  
General Counsel  
Vector Capital IV, L.P.  
1 Market Street, Steuart Tower, 23<sup>rd</sup> Floor  
San Francisco, California 94105  
(w/o enclosures)

Mr. Andrew J. Ehrlich  
Counsel for Apollo Management VIII, L.P.  
Paul, Weiss, Rifkind, Wharton  
& Garrison, LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
(w/o enclosures)

Mr. Marco V. Masotti  
Counsel for Clearlake Capital Group, L.P.  
Paul, Weiss, Rifkind, Wharton  
& Garrison, LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
(w/o enclosures)

Ms. Mel Wheaton  
Ignition Ventures Mangement, LLC  
DLA Piper, LLP  
701 Fifth Avenue, Suite 7000  
Seattle, Washington 98104-7044  
(w/o enclosures)

Ms. Phyllis A. Schwartz  
Counsel The Veritas Capital Fund  
Schulte Roth & Zabel, LLP  
919 Third Avenue  
New York, New York 10022  
(w/o enclosures)

Ms. Tina St. Pierre  
Vice President  
Landmark Partners  
10 Mill Pond Lane  
Simsbury, Connecticut 06071-2429  
(w/o enclosures)