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November 10, 2015

Mr. Gary B. Lawson
Counsel for the El Paso Firemen & Policemen's Pension Fund
Strasburger & Price, L.L.P.
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OR2015-23605

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# 586590.

The El Paso Firemen & Policemen's Pension Fund (the "fund"), which you represent, received a request for information pertaining to the fund's proposed commitment to Southern Cross Latin America Private Equity Fund V, LP ("Southern Cross"), including correspondence between the fund and Meketa Investment Group, Inc. ("Meketa"). You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.111 and 552.143 of the Government Code. You also state you notified Southern Cross and Meketa 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 Southern Cross and Meketa. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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;

(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). The fund, Southern Cross, and Meketa argue portions of the submitted information are excepted from disclosure under sections 552.110, 552.111, and 552.143 of the Government Code. However, the exceptions to disclosure found in the Act, including sections 552.110, 552.111, and 552.143, do not apply to information made public by section 552.0225. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the fund must release the types of information enumerated in section 552.0225(b) of the Government Code.

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 for 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).

(c) 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(a)-(c). The fund argues the information at issue pertains to the fund's contemplated purchase of restricted securities. *See id.* § 552.143(d)(3) (defining "restricted securities" for purposes of section 552.143); *see also* 17 C.F.R. § 230.144(a)(3) (defining "restricted securities" as "securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving public offering"). The fund explains its contemplated investment in these private investment funds would not be made in the open market and would not be made for the purposes of reinvestment. Based on these representations and our review, we find, with the exception of information the fund must release pursuant to section 552.0225(b) of the Government Code, the fund must withhold the submitted information under section 552.143(a) 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,


Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 586590

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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