KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2016

Ms. Leena Chaphekar
Assistant General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2016-10293

Dear Ms. Chaphekar:

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# 608757.

The Employees Retirement System of Texas ("ERS") received a request for (1) all e-mails sent to or from a named individual during a specified time frame; (2) all e-mails mentioning a named individual during a specified time frame; (3) all paper correspondence received from a named individual during a specified time frame; (4) all e-mails sent to or from any of eighteen named individuals during a specified time frame; (5) all e-mails sent to or from a specified domain during a specified time frame; (6) all public information requests received by ERS mentioning a named individual, and ERS's responses to those requests, during a specified time frame; and (7) all e-mails sent to or from a named individual during a specified time frame. You claim the requested information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code. We have considered the exceptions you claim.

Initially, we note ERS seeks to withdraw its request for an open records decision because it asserts the request for information was withdrawn by operation of law when the requestor failed to timely respond to a cost estimate for providing the requested records. Upon review of a copy of the cost estimate, we find it does not comply with the requirements of section 552.2615(a) of the Government Code. Gov't Code § 552.2615(a). Accordingly, we

conclude the request for information was not withdrawn by operation of law. *See id.* § 552.2615(b).

Next, we must address ERS's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). ERS received the request for information on February 12, 2016. However, as of the date of this letter, ERS has not submitted for our review written comments stating the reasons why the stated exceptions apply or a copy or representative sample of the information requested. Consequently, we find ERS failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because ERS has failed to comply with the procedural requirements of the Act, it has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although ERS also raises mandatory exceptions to disclosure, because ERS has not submitted the requested information for our review, we have no basis for finding any of the information is excepted from disclosure or confidential by law. Thus, we have no choice but to order ERS to release the requested information pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 608757

c: Requestor