



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

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Mr. Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

Opinion No. KP-0348

Re: Application of section 552.143 of the Government Code to investment information published in a media source of general circulation (RQ-0365-KP)

Dear Mr. Guthrie:

You ask about the application of section 552.143 of the Government Code, the Public Information Act (the “Act”), to investment information published in a media source of general circulation.¹ Section 552.143 provides that information described in the statute is confidential “[u]nless the information has been publicly released.” TEX. GOV’T CODE § 552.143(b). You tell us that the Teacher Retirement System of Texas (the “System”) “invests in real estate and other private asset classes by investing pension assets in private investment funds as defined in section 552.143(d).” Request Letter at 2. You ask us to “assume that the name of a specific portfolio investment within the fund is published in a general circulation newspaper.” *Id.* You ask us to further assume that the newspaper does not reveal the source of the information, the System is not the source of the disclosure, and the System does not know who disclosed the information. *Id.* You ask whether “publication in a regularly published journalistic media source, such as a general circulation newspaper, of certain investment information that is confidential by law under Section 552.143 of the Act” makes that information “publicly released” and therefore no longer “confidential by law” under section 552.143(b). *Id.* Should we determine that the information maintained by the System is no longer confidential under section 552.143(b), you ask if employees and trustees may affirmatively confirm the accuracy of the published information without violating the prohibition against disclosing confidential information under section 552.352 of the Act and the confidentiality provisions of section 552.143(a). *See id.*

Courts construing a statute attempt “to determine and give effect to the Legislature’s intent, which is generally reflected in the statute’s plain language.” *CHCA Woman’s Hosp., L.P. v. Lidji*,

¹See Letter from Mr. Brian K. Guthrie, Exec. Dir., Teacher Ret. Sys. of Tex., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (July 17, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0365KP.pdf> (“Request Letter”).

403 S.W.3d 228, 231 (Tex. 2013). To do so, courts generally “analyze statutory language in context, considering the specific section at issue as well as the statute as a whole.” *Id.* at 232. Section 552.021, the Act’s foundational rule of required disclosure, generally requires a governmental body to make its public information available to the public upon proper request.² TEX. GOV’T CODE §§ 552.021, .221(a). The Act defines public information as “information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for a governmental body under specified circumstances. *Id.* § 552.002(a). The Act applies to such information recorded in virtually any form of media and specifies that the

general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

Id. § 552.002(b), (c).

The Act identifies some categories of information that constitute public information that are “not excepted from required disclosure unless made confidential under this chapter or other law.” *Id.* § 552.022(a). The Act also identifies specific categories of information that are generally excepted from the rule of required disclosure. *See, e.g., id.* §§ 552.101–160. “Information is excepted from [required disclosure] if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. A person who distributes information considered confidential under the Act commits an offense. *Id.* § 552.352(a). Moreover, an officer or an employee of a governmental body commits an offense by using confidential information for improper purposes, allowing an unauthorized person to inspect the information, or disclosing the information to an unauthorized person. *Id.* § 552.352(a-1).

For governmental investment information, the general “policy of this state [is] that investments of government are investments of and for the people and the people are entitled to information regarding those investments.” *Id.* § 552.0225(a). Subsection 552.0225(b) of the Act lists sixteen “categories of information held by a governmental body relating to its investments [that] are public information and not excepted from disclosure,” such as the name of a fund or entity in which the governmental body has invested, the amount of the investment, the amount of money invested by the governmental body, the rate of return, the percentage ownership interest in the fund, and other specified matters. *Id.* § 552.0225(b).

Section 552.143 of the Act, on the other hand, makes certain investment information confidential, providing in part:

²A private entity is not a governmental body under the Act unless it is “supported in whole or in part by public funds.” TEX. GOV’T CODE § 552.003(1)(A)(xv); *see Greater Houston P’ship v. Paxton*, 468 S.W.3d 51, 63 (Tex. 2015). Assuming the fund is not a governmental body, it nonetheless is subject to section 552.143 because it is supported by public funds.

- (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 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 disclosure].*

Id. § 552.143(a), (b) (emphasis added). Thus, information specified in subsection (a) is confidential if it is (1) prepared or provided by a private investment fund, (2) held by a governmental body, and (3) does not constitute one of the categories specified as public information in subsection 552.0225(b). *Id.* § 552.143(a).

Subsection 552.143(b) specifically provides that “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 “unless the information has been publicly released.”³ *Id.* § 552.143(b). Thus, subsection 552.143(b) expressly anticipates that the information may be released in some circumstances. In context, a release of information under the Act generally involves an authorized or required action. *See, e.g., id.* §§ 552.0038(d) (authorizing a retirement system to release information in certain circumstances), .204 (stating that a public information officer “is responsible for the release of public information as required by this chapter”), .305(a), (d) (authorizing a governmental body to decline to release a person’s proprietary information that is subject to an exception under section 552.143 in order to seek an attorney general opinion). But subsection (b) does not define “publicly released” and does not address who or how the otherwise confidential information may be publicly released.

However, we need not resolve how information in subsection (b) may be publicly released to address the scenario you describe. You ask about the publication “of certain investment information that is confidential by law under Section 552.143 of the Act.” Request Letter at 1. But you ask us to assume only that the name of the specific portfolio investment within the fund was published in a general circulation newspaper and that the source of the information reported in the newspaper is unknown. *Id.* at 2.

That a newspaper account includes information that may also be found in confidential information maintained by a governmental body does not necessarily establish that the report derived from the confidential information. *See Tex. Att'y Gen. ORD-376* (1983) at 2–3 (determining that a governmental body could assert the confidentiality of memoranda even though quotations purportedly from the memoranda had been published in the newspaper); *ORD-387* (1983) at 3 (stating that this office “has never held that information which is not voluntarily released by a governmental body, but which nevertheless comes into the possession of another party, is henceforth automatically available to everyone”). “[T]he right to exclude information

³Subsections 552.143(b) and (c) provide an exception to confidentiality, but you state that it is not pertinent to your question. *See TEX. GOV'T CODE* § 552.143(b), (c); Request Letter at 2 n.1.

from disclosure does not dissolve simply because that information may be available to the public in some form.” *Tex. Appleseed v. Spring Branch Indep. Sch. Dist.*, 388 S.W.3d 775, 780 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (quotation marks omitted). Moreover, the publication of some information in a newspaper does not waive the confidentiality of other related information prepared or maintained by the governmental body or a private investment fund. *See Cornyn v. City of Garland*, 994 S.W.2d 258, 266 (Tex. App.—Austin 1999, no pet.) (holding that “the waiver resulting from a governmental body’s disclosure of documents extends only to the documents released, and not with respect to other, related documents” (quotation marks omitted)). Thus, from your description, we cannot conclude that information reported in the newspaper was derived from information prepared or maintained by a governmental body or a private investment fund or that otherwise confidential information was publicly released as authorized under the Act. Because we cannot conclude as a matter of law that the information is no longer confidential, we do not address your remaining questions.

S U M M A R Y

Under subsection 552.143(b) of the Government Code, certain information prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the general disclosure requirement under the Public Information Act, unless the specified information has been publicly released. The facts recited in the request letter do not establish a basis for the conclusion that information reported in the newspaper was derived from information prepared or maintained by a governmental body or a private investment fund or that otherwise confidential information was publicly released as authorized under the Act.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton".

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