



**RECEIVED**

By Opinion Committee at 11:54 am, Jul 17, 2020

**RQ-0365-KP**

FILE# **ML-48840-20**

I.D.# **48840**

800.223.8778

www.trs.texas.gov

**Brian K. Guthrie**

Executive Director

1000 Red River Street  
Austin, Texas 78701-2698

July 17, 2020

By email to: [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

The Honorable Ken Paxton  
Office of the Attorney General  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Request for opinion about third party publication of information deemed confidential by Section 552.143 of the Public Information Act (Chapter 552, Gov't Code) (the "Act").

Dear Mr. Attorney General:

The Teacher Retirement System of Texas ("TRS") submits this opinion request under Government Code Section 402.042 on a question of public interest and official duties.

**Questions:**

Does 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 make that information "publicly released" and no longer "confidential by law" under Section 552.143(b) of the Act?

If so, may TRS employees and trustees affirmatively confirm the accuracy of the published information without violating the penal provisions in Section 552.352 of the Act?

If the published information is deemed public under 552.143(b) of the Act, does Section 552.143(a) of the Act nevertheless prevent TRS employees and trustees from affirmatively confirming the accuracy of the published information?

**Discussion:**

Section 552.143(a) and (b) of the Act provide as follows:

Sec. 552.143 CONFIDENTIALITY OF CERTAIN INVESTMENT INFORMATION

(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).<sup>1</sup>

Section 552.0225 of the Act declares that specified categories of information relating to private investment funds are public and must be disclosed under the Act. This information includes, for example, the name of the fund, the internal rate of return of the fund, and the amount of money the governmental entity has committed to the fund. In contrast, Section 552.143 provides that certain information pertaining to portfolio investments of the fund is “confidential by law” and may not be disclosed to the public. A governmental body may not waive Section 552.143 or voluntarily disclose information that the statute protects. *See* Section 552.007 (stating that a governmental body may voluntarily disclose its information publicly “unless the disclosure is expressly prohibited by law or the information is confidential under law”); Section 552.102 (stating that information is excepted from disclosure under the Act if the information is “confidential by law, either constitutional, statutory, or by judicial decision”).<sup>2</sup>

Under Section 552.352(a-1)(3) of the Act, a person commits a misdemeanor offense if the person knowingly discloses confidential information to a person who is not authorized to receive it. Section 552.352(c) provides that a violation under Section 552.352 constitutes official misconduct.

The question here is whether the phrase “unless the information has been publicly released” under 552.143(b) of the Act permits a governmental body to confirm the accuracy of published information that would otherwise be considered “confidential by law.”

TRS invests in real estate and other private asset classes by investing pension assets in private investment funds as defined in Section 552.143(d) of the Act. For purposes of this request, please assume that the name of a specific portfolio investment within the fund is published in a general circulation newspaper. Please assume further that the source of the disclosure is not identified by the publication, that TRS is not the source of the disclosure, and that TRS does not know who disclosed the information.

---

<sup>1</sup> Subsection (c) of Section 552.143 is not relevant to this request.

<sup>2</sup> By way of background, when TRS receives a request for information it believes is subject to Section 552.143 of the Act, TRS declines to release the information and requests an Attorney General decision as permitted by Section 552.305(a) of the Act and notifies third parties under Section 552.305(d). Decisions by your office relating to private investment fund information have consistently determined that fund information that is not listed under Section 552.0225(b) of the Act is confidential under Section 552.143.

The Honorable Ken Paxton  
July 17, 2020  
Page 3 of 3

Thank you for your consideration of this request. Please feel free to contact me; Carolina de Onís, General Counsel; or Heather Traeger, Deputy General Counsel and Chief Compliance Officer if you need additional information or details about this request.

Sincerely,

Teacher Retirement System of Texas

By:

A handwritten signature in black ink, appearing to read "Brian K. Guthrie", with a stylized flourish at the end.

Brian K. Guthrie, Executive Director

cc: Jarvis Hollingsworth, Chairman, Board of Trustees  
Carolina de Onís, General Counsel (Carolina.deOnis@trs.texas.gov)  
Heather Traeger, Deputy General Counsel and Chief Compliance Officer  
(Heather.Traeger@trs.texas.gov)