



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2017

Ms. Marie N. Rovira
Counsel for the Dallas Police and Fire Pension System
Messer, Rockefeller & Fort, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2017-13851

Dear Ms. Rovira:

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# 662942 (DPFP Request Nos. 2017-068 and 2017-069).

The Dallas Police and Fire Pension System (the "system"), which you represent, received two requests from the same requestor for all agreements between the system and specified individuals and businesses, including settlement agreements. You claim the submitted information is excepted from disclosure under sections 552.111 and 552.143 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it is not a part of the requested agreements. This ruling does not address the public availability of the non-responsive information, which we have marked, and the system need not release it in response to the request.

Next, we note the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The responsive information consists of information in an account, contract, or voucher relating to the receipt or expenditure of funds by the system that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(3) under section 552.111 of the Government Code. However, section 552.111 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision No. 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the system may not withhold the information subject to section 552.022(a)(3) under section 552.111 of the Government Code. However, because section 552.143 of the Government Code makes information confidential under the Act, we will consider the applicability of this section to the responsive information.

Section 552.143 of the Government Code provides, in 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).

Gov't Code § 552.143(a), (b). You contend the information at issue is subject to section 552.143. You state the information at issue “ha[s] remained confidential and ha[s] not been disclosed to outside parties.” Additionally, you state the information at issue “consists of confidential information not listed in section 552.0225(b) of the Act.” However, we find you have failed to demonstrate the information at issue was prepared or provided by a private investment fund or constitutes pre-investment or post-investment due diligence information. Accordingly, we find the system may not withhold the information at issue under section 552.143 of the Government Code. Consequently, the system must release the responsive information.

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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez".

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 662942

Enc. Submitted documents

c: Requestor
(w/o enclosures)