



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2019

Mr. W. Montgomery Meitler
Senior Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2019-27146

Dear Mr. Meitler:

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# 788055 (ORR# 38955).

The Texas Education Agency (the "TEA") received a request for fifteen categories of information related to the Permanent School Fund, investments in and correspondence with Academy Sports + Outdoors, and information related to gun violence or mass shootings. The TEA states it does not maintain information responsive to most of the requested categories of information.¹ The TEA states it is releasing some of the requested information. The TEA claims the submitted information is excepted from disclosure under section 552.143 of the Government Code. Additionally, the TEA states release of the submitted information may implicate the proprietary interests of Neuberger Berman. Accordingly, the TEA states, and provides documentation showing, it notified Neuberger Berman of the request for information and of the 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

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, the TEA states it sought clarification of a portion of the request for information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). The TEA states it has not received a response to its request for clarification. Accordingly, the TEA has no obligation at this time to release any information that might be responsive to this portion of the request. However, if the TEA receives clarification and wishes to withhold any of the information encompassed by the clarified request, the TEA must request another decision from this office at that time. *See id.* §§ 552.301, .302; *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 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). The TEA states the submitted information was prepared and provided to the TEA by a private investment fund and includes pre- and post-investment diligence information. The TEA states the information concerns the indirect holdings of the Texas Permanent School Fund, which occurred through fund of fund investments. The TEA informs us this information is not subject to disclosure pursuant to section 552.0225 of the Government Code. *See id.* § 552.0225. Based on these representations and our review, we find the TEA has demonstrated the applicability of section 552.143(a) to the information at issue. Thus, the TEA must withhold the submitted information under section 552.143 of the Government Code.

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 788055

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)