



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2020

Ms. Rachel Feibus
Staff Attorney
Houston Municipal Employees Pension System
1201 Louisiana Street, Suite 900
Houston, Texas 77002

OR2020-19852

Dear Ms. Feibus:

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# 839076.

The Houston Municipal Employees Pension System (the "system") received a request for five categories of information pertaining to the system's deferred compensation plan. Although the system takes no position as to whether the submitted information is excepted under the Act, the system states release of the submitted information may implicate the proprietary interests of Great-West Retirement Services ("Great-West"). Accordingly, the system states, and provides documentation showing, it notified Great-West of the request for information and of its 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 of exception in the Act in certain circumstances). We have reviewed the submitted information.

Initially, you state the system sought clarification from the requestor for a portion of the request for information. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad 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). You state the system has not received a response from the requestor for this portion of the request. Thus, for the portion of the request for which you have sought but not received clarification, we find the system is not required to release information in response to this portion of the

request. However, if the requestor clarifies this portion of the request for information, the system must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Great-West explaining why the submitted information should not be released. Therefore, we have no basis to conclude Great-West has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest Great-West may have in the information. As no exceptions to disclosure have been raised, the system must release the submitted 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 <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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/jxd

Ref: ID# 839076

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)