



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2020

Mr. Chris Cowan
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2020-20749

Dear Mr. Cowan:

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# 839432 (Pro Publica 20-1.3).

The Teacher Retirement System of Texas (the "system") received a request for information pertaining to a specified fund.¹ You state the system will redact certain information under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under section 552.143 of the Government Code.³ You also state release of the submitted information may implicate the proprietary interests of Leonard Green & Partners, L.P. Accordingly, you state, and provide documentation showing, the system notified the third party of the request for information and of the right to submit arguments to this office as to

¹ The system provides documentation showing it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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 overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

³ Although you also raise section 552.101 of the Government Code in conjunction with section 552.143 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act or discovery privileges. *See* Open Records Decision No. 676 at 1-2 (2002).

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 considered the exception you claim and reviewed the submitted representative sample of information.⁴

Initially, we note, and you acknowledge, you marked portions of the submitted information as not responsive to this instant request for information. This ruling does not address the public availability of non-responsive information, and the system need not release non-responsive information to the requestor.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why info relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the third party. Thus, we have no basis to conclude the third party 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 any of the submitted information on the basis of any proprietary interest the third party may have in the information.

We note some of the responsive information is subject to section 552.0225(b), which reads as follows:

The following categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under [the Act]:

- (1) the name of any fund or investment entity the governmental body is or has invested in;
- (2) the date that a fund or investment entity described by Subdivision (1) was established;
- (3) each date the governmental body invested in a fund or investment entity described by Subdivision (1);
- (4) the amount of money, expressed in dollars, the governmental body has committed to a fund or investment entity;
- (5) the amount of money, expressed in dollars, the governmental body is investing or has invested in any fund or investment entity;

⁴ 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.

(6) the total amount of money, expressed in dollars, the governmental body received from any fund or investment entity in connection with an investment;

(7) the internal rate of return or other standard used by a governmental body in connection with each fund or investment entity it is or has invested in and the date on which the return or other standard was calculated;

(8) the remaining value of any fund or investment entity the governmental body is or has invested in;

(9) the total amount of fees, including expenses, charges, and other compensation, assessed against the governmental body by, or paid by the governmental body to, any fund or investment entity or principal of any fund or investment entity in which the governmental body is or has invested;

(10) the names of the principals responsible for managing any fund or investment entity in which the governmental body is or has invested;

(11) each recusal filed by a member of the governing board in connection with a deliberation or action of the governmental body relating to an investment;

(12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity;

(13) the minutes and audio or video recordings of each open portion of a meeting of the governmental body at which an item described by this subsection was discussed;

(14) the governmental body's percentage ownership interest in a fund or investment entity the governmental body is or has invested in;

(15) any annual ethics disclosure report submitted to the governmental body by a fund or investment entity the governmental body is or has invested in; and

(16) the cash-on-cash return realized by the governmental body for a fund or investment entity the governmental body is or has invested in.

Gov't Code § 552.0225(b). The system argues the responsive information is excepted under section 552.143 of the Government Code. However, the exceptions to disclosure found in the Act do not apply to information made public by section 552.0225. *See Open*

Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the system must release the types of information enumerated in section 552.0225(b) of the Government Code.

Section 552.143 of the Government Code provides in relevant 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). You state some of the information at issue consists of information held by the system that was prepared and provided by a private investment fund. Based on your representations and our review, with the exception of information the system must release pursuant to section 552.0225(b) of the Government Code, we agree the system must withhold the information you indicated under section 552.143(a) of the Government Code. You also state the remaining responsive information consists of "confidential pre- and post-investment due diligence" information prepared or provided by the fund through its manager, prepared or maintained by the system, or both. You state the system obtained and used the remaining responsive information in preparing due-diligence reviews, analysis, and opinions related to the investment in the fund by the system. Further, you state the information at issue has not been released to the public. Based on these representations and our review, we find the system must withhold the remaining responsive information under section 552.143(b) of the Government Code.

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,

Pearlie Gault
Attorney
Open Records Division

PG/mo

Ref: ID# 839432

Enc. Submitted documents

c: Requestor
(w/o enclosures)