



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 11, 2022

Mr. Jay Dale  
City Attorney  
City of Pasadena  
P.O. Box 672  
Pasadena, Texas 77501-0672

OR2022-23942

Dear Mr. Dale:

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# 963065 [ORR SL2293].

The City of Pasadena (the "city") received a request for a list of names of certain city employees. You claim the submitted information is not subject to the Act. You also claim the submitted information is exempted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.0038(c) of the Government Code provides that a governmental entity that maintains records of a participant in a retirement system's retirement program in cooperation with or on behalf of a retirement system is not required to accept or comply with a request for such information or to seek an opinion from the attorney general because the records are exempt from the provisions of the Act. *See* Gov't Code § 552.0038(c). Therefore, to the extent the submitted information consists of records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, then pursuant to section 552.0038(c) of the Government Code the information is not subject to the Act and the city is not required to release it in response to the request.

Next, we note only the submitted names of the employees at issue are responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this request.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 of the Government Code encompasses section 855.115 of the Government Code. Section 855.115 provides, in relevant part:

(a) In this section, “participant” has the meaning assigned by Section 855.114.

(a-1) Information contained in records that are in the custody of the [Texas Municipal Retirement System (the “retirement system”)] or maintained in the custody of another governmental entity or an administrator or carrier acting in cooperation with or on behalf of the retirement system concerning a participant is confidential and not subject to public disclosure. Except as otherwise provided by this section, the retirement system is not required to accept or comply with a request for a record or information about a record of a participant, or to seek an opinion from the attorney general because the records of a participant are not public records and are exempt from disclosure and the public information provisions of Chapter 552 [of the Government Code]. The information may not be disclosed unless:

(1) the information is disclosed to:

(A) the participant or the participant’s attorney, guardian, executor, administrator, conservator, or other person who the director [of the retirement system] determines is acting in the interest of the participant or the participant’s estate;

(B) a spouse or former spouse of a participant after the director determines that the information is relevant to the spouse’s or former spouse’s interest in member accounts, benefits, or other amounts payable by the retirement system;

(C) a governmental official or employee after the director determines that disclosure of the information requested is reasonably necessary to:

(i) the performance of the duties of the official or employee; or

(ii) perform the purposes of the retirement system; or

(D) a person authorized by the participant in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the director determines that the participant will have a reasonable opportunity to contest the subpoena.

Gov't Code § 855.115(a), (a-1); *see also id.* § 855.114 (defining "participant" as a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system). The responsive information consists of retirement system enrollment information concerning city employees. This information consists entirely of retirement system information concerning participants that are maintained by the city in cooperation with the retirement system. The requestor is not a person to whom disclosure may be permitted under this provision and you do not indicate the city has otherwise been authorized to release the information. *See id.* § 855.115(a-1). Accordingly, the city must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 855.115 of the Government Code.<sup>1</sup>

In summary, to the extent the submitted information consists of records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, then pursuant to section 552.0038(c) of the Government Code the information is not subject to the Act and the city is not required to release it in response to the request. To the extent the responsive information is subject to the Act, the city must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 855.115 of the Government Code.

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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,

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/jxd

Ref: ID# 963065

c: Requestor