



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2022

Ms. Ruth H. Soucy
Deputy Chief Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2022-24358A

Dear Ms. Soucy:

Our office issued Open Records Letter No. 2022-24358 (2022) on August 16, 2022. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on August 16, 2022. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Your request was assigned ID# 972226.

The Texas Comptroller of Public Accounts (the "comptroller's office") received eighteen requests from fourteen different requestors for information related to a specified topic. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of specified third parties. Accordingly, you state, and provide documentation showing, you notified these third parties of the request and their right to submit arguments to this office.¹ *See id.*

¹ The notified third parties are as follows: 1919 Investment Counsel, LLC ("1919"); AllianceBernstein; Allspring Funds Management, LLC; ALPS Advisors, Inc.; American Century Investment Management, Inc.; AMG Funds, LLC ("AMG"); Amundi Asset Management US, Inc. ("Amundi"); AQR Capital Management, LLC ("AQR"); Artisan Partners Limited Partnership ("Artisan"); Barclays Capital Inc.; BlackRock; Blackstone Inc.; BNP Paribas; Brown Advisory LLC; Calamos Asset Management, Inc. ("Calamos"); Columbia Management Investment Advisers, LLC; DBX Advisors LLC ("DBX"); Eventide Asset Management, LLC ("Eventide"); First Trust Portfolios L.P.; Franklin Resources Inc.; Global X Management Company LLC ("Global X"); Great-West Capital Management, LLC; Hartford Funds Management Company, LLC; Invesco; Janus Henderson Investors US LLC; John Hancock Investment Management LLC; Lazard Asset Management LLC; Metropolitan West Asset Management, LLC; Nationwide Fund Advisors; Natixis Investment Managers; NatWest Group PLC; Northern Trust Investments, Inc.; New York Life Investment Management LLC; Pacific Investment Management Company LLC; PGIM Investments LLC

§ 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 received comments from 1919, AMG, Amundi, AQR, Artisan, Calamos, DBX, Eventide, Global X, PGIM, and WisdomTree.² We have considered the submitted arguments and reviewed the submitted information.

Initially, we note not all of the submitted information is responsive to every request at issue. The comptroller's office need not release to any requestor information that is not responsive to that requestor's request.

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 information 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 any remaining third party. Thus, we have no basis to conclude any remaining 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 comptroller's office may not withhold any of the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

Section 552.1101 of the Government Code provides, in relevant part, as follows:

(a) [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from [required disclosure] if the vendor, contractor, potential vendor, or potential contract that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organization structure;

(C) staffing;

("PGIM"); Putnam Investment Management, LLC; Russell Investments Group, Ltd.; UBS Group AG; VALIC Company I; Vident Investment Advisory, LLC; Wells Fargo & Co.; and WisdomTree Asset Management, Inc. ("WisdomTree").

² Although AQR raises section 552.0225(b) of the Government Code, this section is not an exception to public disclosure. Rather, section 552.0225(b) enumerates categories of information relating to a governmental body's investments that are public and not excepted under the Act. Gov't Code § 552.0225(b).

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents, and

(2) give advantage to a competitor.

Id. § 552.1101(a). 1919, AMG, Amundi, Artisan, Calamos, DBX, Eventide, Global X, PGIM, and WisdomTree assert disclosure of their information at issue would reveal an individual approach to its internal processes, discounts, or pricing methodology and give advantage to a competitor. Upon review, we find 1919, AMG, Amundi, Artisan, Calamos, DBX, Eventide, Global X, PGIM, and WisdomTree have demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the comptroller's office must withhold the information we have marked under section 552.1101(a) of the Government Code. However, we find the third parties at issue have failed to demonstrate the applicability of section 552.1101 to any portion of the remaining information. Therefore, the comptroller's office may not withhold any of the remaining information at issue under section 552.1101(a) 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.

Id. § 552.143(a). AQR explains its information consists of information provided by AQR, a private investment fund, to the comptroller's office. AQR further states, and we agree, information is not subject to section 552.0225(b). *See id.* § 552.0225(b). Upon review, we find AQR has demonstrated the applicability of section 552.143(a) to its information. Accordingly, the comptroller's office must withhold the information we have marked under section 552.143(a) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically exclude by subsection (c).³ *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, the general e-mail address of a business, an Internet website address, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address a governmental entity maintains

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). We are unable to determine if the e-mail addresses within the remaining information fall within the scope of section 552.137(c). Accordingly, we must rule conditionally. To the extent the e-mail addresses in the remaining information are not excluded by section 552.137(c), the comptroller's office must withhold them under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. *See id.* § 552.137(b). However, to the extent the e-mail addresses in the remaining information are excluded by section 552.137(c), the comptroller's office may not withhold them under section 552.137 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the comptroller's office must: (1) withhold the information we have marked under section 552.1101(a) of the Government Code; (2) withhold the information we have marked under section 552.143(a) of the Government Code; (3) withhold the e-mail addresses in the remaining information to the extent the e-mail addresses at issue are not excluded by section 552.137(c) of the Government Code, unless the owners affirmatively consent to their public disclosure; and (4) release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 972226

Enc. Submitted documents

c: 12 Requestors
(w/o enclosures)

10 Third Parties
(w/o enclosures)