



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1995

Mr. Craig Underwood
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR95-596

Dear Mr. Underwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32659.

The Teacher Retirement System of Texas (the "TRS") has received a request for information in its possession related to its lending program. You state that by letter dated March 29, 1995, the Bank of New York informed you that it considered its Custody and Securities Lending Contracts with TRS, which are some of the requested documents, to be confidential. You state that because of the Bank of New York's claim, you have not released this information to the requestor. You have submitted these documents to us for review.¹ This office notified the Bank of New York of the request for information and informed it that it could assert exceptions under the act. The Bank of New York responded, by letter dated May 18, 1995, notifying this office that it "found no exceptions [under the act] that would apply to withholding the release of the Custody and Securities Lending Contracts between The Bank of New York and the Teachers Retirement System of Texas."

Under the act, all information held by a governmental body is open unless it falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). However, in cases such as this one, where a third party's privacy or property interests may be implicated, the governmental body may

¹The information requested and not submitted for our review is public and we assume that it has been released. Gov't Code § 552.221.

rely on the third party to establish that the information should be withheld under applicable exceptions intended to protect those interests. Gov't Code § 552.305; Open Records Decision No. 542 (1990). A third party must raise which exception applies to the information, identify the specific part or parts of the records that are within the exception raised, and explain why each exception is applicable. A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436 (1974). The act does not require that this office raise and consider exceptions that have not been raised.

Since the Bank of New York raised no exception under the act, the information is public and the TRS must disclose the Custody and Securities Lending Contracts between The Bank of New York and the TRS to the requestor.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/KHG/rho

Ref.: ID# 32659

Enclosures: Submitted documents

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