



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 4, 1998

Mr. Barney L. Knight
Attorney at Law
111 W. Anderson Lane, Suite D218
Austin, Texas 78752

OR98-1118

Dear Mr. Knight::

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# 114472.

The City of Austin Employee's Retirement System (the "System"), which you represent, received a request for the "System's #1 latest month-end US and non-US fixed-income ownership portfolio holdings data." The request further specifies that the information be "broken out" by manager and sets six categories of information requested for each bond held. You assert that the information is excepted from disclosure pursuant to sections 552.101, 552.104 and 552.105 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.104 excepts information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 (1990) at 4, 520 (1989) at 4. A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 (1987) at 2.

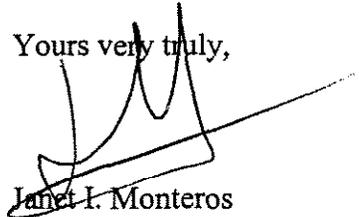
You inform this office that the System operates under a fiduciary responsibility established through article 6243n, V.T.C.S., which includes the management of the System's resources and investments. You point out the number of ways the knowledge of certain bond information can adversely impact the System's competitive position and portfolio value. Additionally you state that the System's investment managers are making ongoing decisions about buying and selling which includes bonds and investments that are currently in the

System's investment portfolio. You state that the firms managing the fixed income portfolio trade, buy, sell, and enter into repurchase agreements on a daily basis and the advisability of continuing to hold, to sell, or to make additional investments in any individual bond changes with the market and global events. You say that the investment managers are buying and selling such bonds on an ongoing basis, in a highly competitive market, for the System. It is your position that to reveal the information sought exposes the System to material disadvantages as it is in competition with the requestor, termed as the "multi-national competitor."

We have reviewed the arguments submitted by the System and conclude that the System has met its burden of establishing how release of the fund's latest month-end U.S. and non-U.S. fixed-income ownership portfolio holdings data harms the System's interests in the bond market place. *See Open Records Decision No. 453 (1986)*. Therefore, the System may withhold requested documents under section 552.104 of the Government Code.¹

We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/gle

Ref.: ID# 114472

Enclosures: Submitted documents

cc: Mr. Rich Gomez
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(w/o enclosures)

¹As we address the exception under section 552.104, we need not address the other exceptions you assert.