



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 24, 1998

Mr. J. Robert Giddings
Office of General Counsel
University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR98-2007

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117814.

The University of Texas System (the "university") received a request for copies of correspondence between the university and various financial institutions and corporations as well as records identifying individuals named to university committees and a record of the directorships occupied by employees of the Office of Asset Management. You state that you will give the requestor access to documents that:

- (1) identify individuals named to the Investment Advisory Committee, Technology Transfer Evaluation Task Force, and Special Advisors and members of the Asset Management Company since 1992;
- and (2) identify those directorships occupied by the Office of Asset Management employees, including Tom Ricks and Austin Long and Regent Tom Hicks.

These documents are responsive to item 3 of the request. You indicate that the university does not have documents responsive to item 1 of the request. You contend that the documents responsive to item 2 of the request are confidential financial documents relating to the university's investments in the private equity marketplace. You have submitted

representative samples of those financial documents to this office for review.¹ You contend that the submitted documents are excepted from disclosure under sections 552.104 and 552.110 of the Government Code.

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the government's interests when it is involved in certain commercial transactions. For example, section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.,* Open Records Decision No. 463 (1987). In these situations, the exception protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the award of a contract. When a governmental body seeks protection as a competitor, however, we have stated that it must be afforded the right to claim the "competitive advantage" aspect of section 552.104 if it meets two criteria. The governmental body must first demonstrate that it has specific marketplace interests. Open Records Decision No. 593 at 4 (1991). Second, a governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *Id.* at 2. Whether release of particular information would harm the legitimate marketplace interests of a governmental body requires a showing of the possibility of some specific harm in a particular competitive situation. *Id.* at 5, 10.

In Open Records Letter No. 97-1776 (1997), we concluded that the University of Texas Investment Management Company ("UTIMCO") and the University of Texas Board of Regents with whom UTIMCO contracts have a common purpose and objective such that an agency-type relationship is created. This office has also previously determined, in the same context, that the University of Texas System may be considered a "competitor" for purposes of section 552.104. Open Records Letter No. 92-0613 (1992).

After reviewing your arguments, we conclude that you have demonstrated that the university has specific marketplace interests. You also argue:

Each private investment vehicle in the private equity marketplace is operated by and through some type of agreement or other arrangement similar to the limited partnership agreements at issue. These agreements are heavily negotiated. The final agreement for a particular private investment vehicle reflects the current state of the

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

private investment market, as well as the disparate investment objectives of the various participants and will therefore be different from the agreements of other private investment vehicles. Each private investment vehicle has a different structure as a result of this negotiation process. If the entire private investment marketplace were able to obtain information about a particular governing agreement of a certain private investment vehicle, both the U.T. System and the managers of the private investment vehicle (from whom the information regarding the governing agreement was obtained) would lose competitive advantages they have developed due to their negotiation skills or their particular accumulation of knowledge regarding the private equity marketplace and would be placed at a material disadvantage in future negotiations with other private market participants.

Based upon our review of the submitted documents and your arguments, we conclude that you have demonstrated actual or potential harm to the university's interests in a particular competitive situation. You have shown that releasing the submitted documents will bring about a specific harm. You may withhold the requested information under section 552.104.²

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 117814

²Because we are able to make a determination under section 552.104, we do not address your additional argument against disclosure.

Enclosures: Submitted documents

cc: Ms. Michelle Brenckman
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(w/o enclosures)