



July 13, 1999

Mr. Thomas G. Ricks  
President  
The University of Texas Investment Management Company  
210 West Sixth Street, Second Floor  
Austin, Texas 78701

OR99-1947

Dear Mr. Ricks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125646.

The University of Texas Investment Management Company (“UTIMCO”) received a request for “UT private investment referral logs / all means of tracking alternative deal flow.” You claim that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed a representative sample of the documents at issue.<sup>2</sup>

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

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<sup>1</sup>You note that the submitted documents are “substantially similar” to documents we previously found to be excepted from disclosure. *See* Open Records Letter Nos. 99-0277 (1999), 98-3276 (1998), 98-2917 (1998).

<sup>2</sup>We 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.

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 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). You have demonstrated that releasing the documents at issue would harm UTIMCO’s marketplace interests. Therefore, you may withhold the requested documents from disclosure pursuant to section 552.104.<sup>3</sup>

Because we are able to resolve this matter under section 552.104, we do not address your additional arguments against disclosure. 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.

Sincerely,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 125646

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<sup>3</sup>Please note, however, that to the extent UTIMCO has released or agreed to release the submitted information, it may not now withhold such information. See Gov’t Code § 552.007 (if information is voluntarily made available by governmental body, it must be made available to any person).

Encl. Submitted documents

cc: Mr. Stephen N. Lisson  
Initiate !!  
P.O. Box 2103  
Austin, Texas 78768  
(w/o enclosures)