



July 19, 1999

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

OR99-2016

Dear Mr. Ricks:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125926.

The University of Texas Investment Management Company ("UTIMCO") received a request for "an executed copy of purported vc-fund confidentiality agreements and all related documentation."¹ In response to the request you submit to this office for review a representative sample of the information at issue. You claim that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code.² We have considered the exceptions and arguments you raise, and have reviewed the information at issue.

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

¹You state that "[b]y his use of the term 'vc', Mr. Lisson apparently was referring to UTIMCO's Alternative Equities Program." We advise you in the future to seek clarification, because when a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that they may narrow or clarify their request.

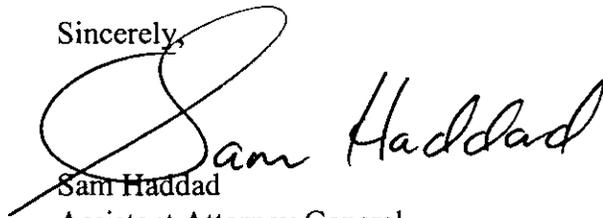
²You contend that the information at issue in the pending request has been reviewed by our office "in connection with the previous open records requests." *See* Open Records Letter Nos. 99-0277 (1999), 98-3276 (1998), 98-2917 (1998).

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). In this instance, under the facts presented, you have demonstrated that releasing the documents at issue would result in “actual or potential harm” to UTIMCO’s marketplace interests in “a particular competitive situation.” Therefore, you may withhold the requested documents from disclosure pursuant to section 552.104 of the Government Code.

As we resolve your request under section 552.104, we need not specifically address your other claimed exception at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision.³ 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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

³In reaching our conclusion, 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.

SH/nc

Ref.: ID# 125926

encl. Submitted documents

cc: Mr. Steven Lisson
Initiate!!
P.O. Box 2013
Austin, Texas 78768
(w/o enclosures)