



September 28, 1999

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

OR99-2722

Dear Mr. Ricks:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127823.

The University of Texas Investment Management Company ("UTIMCO") received a request for the following records:

- Documents that were referenced in the March 20, 1999 *Houston Chronicle* story on UTIMCO's investment practices.
- Any records pertaining to a July 1998 meeting of UTIMCO directors in the boardroom at the Ballpark at Arlington.
- Memos or meeting minutes that record any UTIMCO staff recommendations on UTIMCO investments in The Beacon Group III-Focus Value Fund, L.P.
- Meeting minutes or memos that record UTIMCO investments in American Securities Partners, Evercore Capital Partners, Kohlberg Kravis Roberts & Co. 1996 Fund, and the Maverick Capital Fund.

You have submitted to this office for review a representative sample of documents responsive to the third and fourth requested items that you wish to withhold.¹ You contend these records are excepted from required public disclosure pursuant to 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. When a governmental body seeks protection as a competitor, 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), this office 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, UTIMCO 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 section 552.110 claim at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the

¹We assume that UTIMCO has released the other requested documents to the requestor. If it has not, it must do so at this time. See Gov’t Code § 552.302. We also 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 No. 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.

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, appearing to read "Yen-Ha Le". The signature is written in a cursive, somewhat stylized font.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref.: ID# 127823

Encl. Submitted documents

cc: Ms. Annys Shin
Senior Associate
The Center for Public Integrity
9101 17th Street, North West, 7th Floor
Washington, DC 20006
(w/o enclosures)