



November 22, 1999

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

OR99-3349

Dear Mr. Ricks:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act ("the Act"), chapter 552 of the Government Code. Your request was assigned ID# 129679.

The University of Texas Investment Management Company ("UTIMCO") received a request for "the most recent financial disclosure forms of the public members of the [UTIMCO's] board, [to include] the chancellor, the regent who represents A & M's interest, UTIMCO CEO Tom Ricks, and the last filed disclosure of Mr. Tom Hicks when he was still a member of the Board of Regents." You state that UTIMCO will release to the requestor all of the information except for the financial disclosure statement of Mr. Thomas G. Ricks. You state that UTIMCO is relying on two prior rulings of this office, Open Records Letter Nos. 97-1776 (1997) and 98-1755 (1998), to withhold Mr. Rick's financial disclosure statement from required public disclosure under section 552.101 of the Government Code and the common-law right to privacy.

Section 552.301 of the Government Code generally requires a governmental body that receives a written request for information that it wishes to withhold from required public disclosure and that it considers to be within one of the Act's exceptions to disclosure to ask the attorney general to determine that the information at issue is excepted from disclosure. *See Gov't Code § 552.301(a)*. To enable the attorney general to make this determination, the Act requires a governmental body to follow the Act's procedures for asking for an open

records ruling. *Id.* Under these procedures, a governmental must submit to the attorney general several items of pertinent information, including a copy of the information at issue. *Id.* § 552.301(e)(1)(D). In this case, UTIMCO failed to submit the information at issue, apparently contending that the attorney general has resolved the question of whether it must release the information in a previous determination of this office.

A governmental body need not seek an open records ruling in order to withhold requested information when there has been a “previous determination about whether the information falls within one of the exceptions.” *See id.* § 552.301(a). The attorney general must determine whether an open records ruling constitutes a “previous determination.” *See Houston Publ’g Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989), Open Records Decision No. 435 (1986). When a request involves the precise information at issue in a prior open records ruling, a governmental body need not request another decision from the attorney general under section 552.301(a). Additionally, if requested information belongs to a specific, clearly delineated category of information and the attorney general has ruled that this category of information is excepted from required public disclosure, a governmental body need not request an attorney general decision. *See Rainbow Group, Ltd. v. Texas Employment Comm’n*, 87 S.W.2d 946 (Tex. App.—Austin 1995, writ denied).

Both ORL 97-1771 and ORL 98-1755 concerned the privacy implications of the release of financial disclosure statements. The statements in ORL 97-1771 were those of its private equity managers. The statements in ORL 98-1755 were those of UTIMCO’s outside directors and employees. In both rulings, this office determined that the statements were private information protected from disclosure. Whether UTIMCO may rely on Open Records Letter Nos. 97-1771 and 98-1755 as previous determinations here depends on whether the conclusions in those rulings can be applied to a specific, clearly delineated category of information in every case.

Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Whether there is a public interest in information sufficient to justify its disclosure must be decided on a case-by-case basis. Open Records Decision No. 523 at 4 (1989). Since privacy questions are answered on a case-by-case basis, this office has never issued a previous determination ruling on privacy grounds for any particular information. We do not believe it is appropriate to do so in this instance in regard to personal financial statements.

Nevertheless, UTIMCO must not release the personal statement here. Information about an individual’s overall financial status, financial history and private investment decisions is highly intimate and embarrassing. *See* Open Records Decision Nos. 523 (1989), 373 (1983). We have no information to allow us to conclude that special circumstances exist in this case

to render Mr. Rick's personal financial statement a matter of legitimate public concern. ORD 523 (in particular case, requestor may demonstrate public interest in access sufficient to justify disclosure). We therefore find that, in this case, UTIMCO must withhold from disclosure Mr. Rick's personal financial statement based on section 552.101 of the Government and the common-law right to privacy.

We are resolving this matter with this 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 may 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 cursive script that reads "Kay H. Hastings".

Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/jc

Ref.: ID# 129679

cc: Mr. Lucius Lomax  
P.O. Box 547  
Austin, Texas 78767