



September 25, 2002

Ms. Carol Longoria
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2002-5392

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168578.

The University of Texas System (the “university”) received two related requests for information. The first request seeks any documents related to the performance of the University of Texas Investment Management Company’s (“UTIMCO’s”) investments since January 2000. The second request seeks a list of partnerships in which the University of Texas General Endowment Fund (the “fund”) has an investment, and for each partnership, the fund’s total capital commitment, the investment contributed to date, the aggregate distributions received to date, and the value of the remaining unrealized investment. You advise that you are making some of the requested information available to the requestors. Although you do not raise any exceptions on behalf of the university, you indicate that the requests may implicate the rights of a third party—UTIMCO. Accordingly, you notified UTIMCO of the request pursuant to section 552.305 of the Government Code. In turn, UTIMCO submitted arguments to this office regarding why some of the requested information should not be released. We have considered the submitted arguments and the submitted representative sample of information.¹

The submitted information consists of reports provided to the university’s Board of Regents regarding the status of UTIMCO’s private equity investments. UTIMCO has not objected to the release of the portions of the information that reveal “the amounts UTIMCO has committed, invested, and received in return on each individual partnership investment.”

¹ We assume that the “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.

However, UTIMCO objected to the release of the portions of the submitted information that reveal “partnership investment-specific value estimates and internal rates of return.” Specifically, UTIMCO contended that this information was excepted from disclosure under section 552.104 of the Government Code, which protects from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). Based on subsequent first hand representations by UTIMCO’s counsel and our review of several recent news articles from around the state, we understand that UTIMCO has officially adopted a policy of openness with respect to the remaining value and internal rate of return information and no longer wishes to assert section 552.104 as an exception to the disclosure of the information. In light of this recent policy change, we conclude that UTIMCO has abandoned its claim under section 552.104 of the Government Code with respect to the submitted remaining value and internal rate of return information and may not withhold any of the submitted information under section 552.104.

We also understand from representations made to this office by UTIMCO’s counsel and several recent news articles that UTIMCO may be notifying the interested investment managers whose information is at issue to allow them an opportunity to brief this office. *See* Gov’t Code §§ 552.304 (allowing person to submit to attorney general reasons why information should not be released), .305 (permitting interested third party to submit to attorney general reasons why requested information should not be released). It is unclear what arguments the third parties could raise that would require the university to withhold the submitted information. As of the date of this ruling, this office has not received any arguments from third parties explaining why the submitted information should not be released. Consequently, the third parties have provided this office with no basis to conclude that the submitted information is excepted from disclosure. *See* Gov’t Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Thus, we find that the university must release the submitted information in full. If any of the interested third parties believes that the submitted information is proprietary and therefore excepted from public disclosure, it may pursue its legal remedies in court. *See* Gov’t Code §§ 552.3215, .325.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 168578

Enc. Submitted documents

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