



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2006

Ms. Erin Perales
General Counsel
Houston Municipal Employees Pension System
1111 Bagby, Suite 2450
Houston, Texas 77002-2555

OR2006-10557

Dear Ms. Perales:

You ask 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# 259666.

The Houston Municipal Employees Pension System (the "system") received a request for the second quarter 2006 portfolio of investments. You claim the submitted information that you have marked is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state, and provide documentation showing, that you notified all interested third parties of the system's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released to the requestor.¹ *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). Axiom, Brandes, DePrince, Legg, Smith, and Western

¹The system notified the following companies pursuant to section 552.305: Axiom International Investors, Inc. ("Axiom"); Brandes Investment Partners ("Brandes"); DePrince, Race & Zollo, Inc. ("DePrince"); Legg Mason Capital Management, Inc. ("Legg"); Loomis Sayles & Company; Neumeier Investment Counsel; Smith, Graham & Company, L.P. ("Smith"); and Western Asset Management Company ("Western").

responded to this notice. We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

Initially, we note that some of the submitted information is subject to section 552.0225 of the Government Code. Subsection 552.0225(b) provides in relevant part the following:

The following categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under this chapter:

(1) the name of any fund or investment entity the governmental body is or has invested in;

...

(8) the remaining value of any fund or investment entity the governmental body is or has invested in[.]

Gov't Code § 552.0225(b)(1), (8). The exceptions to disclosure found in the Act do not apply to information that is made public by section 552.0225. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the information subject to subsections 552.0225(b)(1) and (b)(8) must be released.

The system asserts the information it has marked is excepted under section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including when a governmental body competes with private entities in the marketplace. *See* Open Records Decision No. 592 (1991). Under section 552.104, a governmental body may withhold information in order to maintain its competitive advantage in the marketplace if it can demonstrate (1) it has specific marketplace interests and (2) there is a possibility of specific harm to those marketplace interests if the requested information is released. *See* Open Records Decision No. 593 ("competitive aspect" of previous version of section 552.104 applies to governmental bodies as bidders).

You assert that release of the marked information "could significantly hinder [the system]'s ability to compete in the equity and fixed income marketplaces by negatively impacting the ability of the investment managers to negotiate favorable trades and to get the best price for

²We 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.

its investment.” Based on our review of your arguments and the submitted information, we conclude you have demonstrated that the system has specific interests in the investment marketplace for purposes of section 552.104. *See, e.g.*, Open Records Decision No. 593. We also find you have demonstrated that the release of the marked information would cause actual or potential harm to these interests. Therefore, the system may withhold the information marked under section 552.104. The system must release the remaining information to the requestor pursuant to section 552.0225. As our ruling is dispositive, we do not address the other arguments for exception of the information at issue.

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).

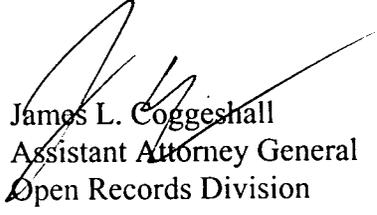
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep’t of Pub. 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 Office of the Attorney General 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 259666

Enc. Submitted documents

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