



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 7, 2009

Mr. James Downes  
Assistant County Attorney  
Harris County  
2525 Holly Hall, Suite 190  
Houston, Texas 77054

OR2009-10978

Dear Mr. Downes:

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# 351709 (CA File No. 09HSP0572).

The Harris County Purchasing Agent (the "county") received a request for the proposals related to 401(k) and 457 plan administration services. Although you take no position with respect to the public availability of the requested information, you explain the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the county notified Diversified Investment Advisors ("Diversified"), Fidelity Investments ("Fidelity"), and Prudential Retirement (Prudential) of this request for information and of their right to submit arguments to this office as to why the information should not be released. *See Gov't Code* § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

Initially, we note that Diversified's and Fidelity's information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-06085 (2009). In Open Records Letter No. 2009-06085, we found that the county must withhold the insurance policy numbers we marked under section 552.136 of the

Government Code and release the remaining information. With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in this prior ruling, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, you must continue to rely on Open Records Letter No. 2009-06085 as a previous determination, and withhold or release this information in accordance with that decision. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we will address the remaining submitted information, which consists of Prudential's proposal. We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Prudential has not submitted any comments to this office explaining how release of the information at issue would affect their proprietary interests. Therefore, Prudential has not provided us with any basis to conclude it has a protected proprietary interest in any of the submitted information. *See id.* § 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. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, the remaining information may not be withheld on this basis. As no arguments are raised against its disclosure, Prudential's information must be released.

In summary, with regard to Diversified's and Fidelity's information, the county must continue to rely on Open Records Letter No. 2009-06085 as a previous determination and withhold or release Diversified's and Fidelity's information in accordance with that decision. Prudential's information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 351709

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. John W. Byrne  
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(w/o enclosures)

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