



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2009

Ms. Pauline E. Higgins
Senior Vice President & General Counsel
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

Mr. Gregory Williams
Senior Staff Counsel
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

OR2009-17900

Dear Ms. Higgins and Mr. Williams:

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# 364930 (MTA No. 2009-0315).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for the sixteen responses related to a specified request for proposals, and a list of checks written by the authority to Merrill Lynch during a particular time period. You state that some responsive information has been released to the requestor. Although you take no position as to the disclosure of the requested information, you state the information may implicate the proprietary interests of third parties. You also state, and provide documentation showing, that you have notified the interested third parties of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclosure under Act in certain circumstances). We have reviewed the submitted information.

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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties explaining why the information at issue should not be released. Therefore, we have no basis to conclude that any third party has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the authority may not withhold any portion of the submitted information based on the proprietary interests of any of the interested third parties.

We note that some of the materials at issue appear to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, the submitted information must be released to the requestor, but any copyrighted information may only be released in accordance with copyright law.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 364930

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Jodie Jiles
RBC Capital Markets
1001 Fannin, Suite 1200
Houston, Texas 77002
(w/o enclosures)

Mr. Chris DeBow
RBC Capital Markets
c/o Ms. Pauline E. Higgins
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429
(w/o enclosures)

Mr. Tom Yang
RBC Capital Markets
345 California Street, Floor 28
San Francisco, California 94104
(w/o enclosures)

Mr. Richard Acosta
Sterne Agee/Kipling Jones
5815 Callaghan Road, Suite 103
Summit II Building
San Antonio, Texas 78228
(w/o enclosures)

Mr. Mark Ellis
DEPFA First Albany Securities LLC
12 Greenway Plaza, Suite 1100
Houston, Texas 77046
(w/o enclosures)

Mr. Vincent A. Matrone
DEPFA First Albany Securities LLC
15950 Dallas Parkway, Suite 525
Dallas, Texas 75248
(w/o enclosures)

Mr. Jorge A. Garza
ESTRADA-HINOJOSA Investment Bankers
1717 Main Street, Suite 4700
Dallas, Texas 75201
(w/o enclosures)

Ms. Karin Werness
Mr. Luis Elizondo-Thompson
ESTRADA-HINOJOSA Investment Bankers
4900 Woodway Drive, Suite 680
Houston, Texas 77056
(w/o enclosures)

Mr. Mark Nitcholas
Banc of America Securities
700 Louisiana Street, 7th Floor
Houston, Texas 77002
(w/o enclosures)

Ms. Kimberley Paparello Vaccari
Banc of America Securities
1633 Broadway Street
New York, New York 10019
(w/o enclosures)

Mr. Riley Simmons
Jackson Securities
14001 Dallas Parkway, Suite 1200
Dallas, Texas 75420
(w/o enclosures)

Mr. Reuben R. McDaniel
Jackson Securities
100 Auburn Avenue NE, 4th Floor
Atlanta, Georgia 30303
(w/o enclosures)

Mr. Ron Marino
CITIGROUP GLOBAL MARKETS, INC.
390 Greenwich Street, 2nd Floor
New York, New York 10013
(w/o enclosures)

Mr. Anderson Bynam
GROUP GLOBAL MARKETS, INC.
5065 Westheimer, Suite 900
Houston, Texas 77056
(w/o enclosures)

Mr. Rodney Ellis
Mr. Leonard Jones
Rice Financial Products Company
333 Clay Street, Suite 3010
Houston, Texas 77002
(w/o enclosures)

Ms. Deborah S. Jones
Mr. Michael G. Walker
Morgan Kegan & Co., Inc.
4400 Post Oak Parkway, Suite 2670
Houston, Texas 77027
(w/o enclosures)

Mr. Art Morales
Ramirez & Co., Inc.
2323 South Shepherd, Suite 930
Houston, Texas 77019
(w/o enclosures)

Mr. Ricardo Villasenor
Ramirez & Co., Inc.
11467 Huebner, Suite 320
San Antonio, Texas 78230
(w/o enclosures)

Ms. Tina Arias Peterman
JPMorgan
601 Travis Street, 18th Floor
Houston, Texas 77002
(w/o enclosures)

Mr. Bob Walsh
JPMorgan
10 South Dearborn, 32nd Floor
Chicago, Illinois 60603
(w/o enclosures)

Mr. Mitchell Gold
UBS Securities LLC
1285 Avenue of Americas, 15th Floor
New York, New York 10019
(w/o enclosures)

Mr. Murphy McCalley
UBS Securities LLC
One California Street, Suite 2700
San Francisco, California 94111
(w/o enclosures)

Ms. Desrye Morgan
UBS Securities LLC
1000 Main Street, Suite 2825
Houston, Texas 77002
(w/o enclosures)

Mr. Lance G. Johnson
Southwest Securities, Inc.
2 Allen Center
1200 Smith Street, Suite 1600
Houston, Texas 77002
(w/o enclosures)

Mr. Richard H. Litton
Southwest Securities, Inc.
1201 Elm Street, Suite 3500
Dallas, Texas 75270
(w/o enclosures)

Mr. John Daniel
Mr. Don McFadyen
Lehman Brothers
399 Park Avenue, 16th Floor
New York, New York 10022
(w/o enclosures)

Mr. Curtis Flowers
Loop Capital Markets, LLC
440 Louisiana, Suite 900
Houston, Texas 77002
(w/o enclosures)

Mr. Stephen Bierer
Loop Capital Markets, LLC
200 West Jackson Boulevard, Suite 1600
Chicago, Illinois 60606
(w/o enclosures)

Mr. Jim Dong
Mr. Dale Lehman
PiperJaffray
1100 Louisiana, Suite 2750
Houston, Texas 77002
(w/o enclosures)

Mr. Carlos Sharpless
Sterne Agee/Kipling Jones
12 Greenway Plaza, Suite 1100
Houston, Texas 77046
(w/o enclosures)

Mr. Edward Jefferson
Mr. Robbi I. Jones
Sterne Agee/Kipling Jones
1200 Smith Street, Suite 1600
Houston, Texas 77002
(w/o enclosures)