



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

Ms. Cheryl D. Alston
Executive Director
Employee's Retirement Fund of the City of Dallas
600 North Pearl Street, Suite 2450
Dallas, Texas 75201-7415

OR2012-05138

Dear Ms. Alston:

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# 450090.

The Employee's Retirement Fund of the City of Dallas (the "fund") received a request for information pertaining to any requests for proposals issued by the fund related to securities lending and collateral investment. You state the fund will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.143 of the Government Code. You indicate release of this information may implicate the proprietary interests of third parties. Accordingly, you state the fund will provide notice to these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *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).* We have considered the exceptions you claim and reviewed the submitted information.

You explain the submitted proposals "expressly provided that certain of the information submitted was confidential and not intended to be disclosed by [the fund.]" We note information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See*

Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the submitted information falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

You assert the submitted information is excepted from disclosure under section 552.143(b) of the Government Code. Section 552.143(b) provides the following:

(b) Unless the information has been publicly released, pre-investment and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

Gov’t Code § 552.143(b). Section 552.143 makes confidential certain investment fund information pertaining to governmental bodies. We note the submitted information consists of two proposals related to master custody services. You state section 552.143(b) exempts pre-investment information. However, you do not explain how the submitted information consists of pre-investment diligence information prepared or maintained by a governmental body or a private investment fund. Consequently, you have failed to demonstrate section 552.143 is applicable to any of the submitted information. Accordingly, none of the submitted information may be withheld under section 552.143 of the Government Code.

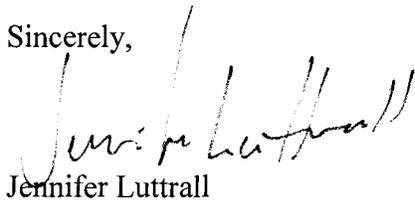
Although the fund argues the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the funds’s argument under section 552.110. We note an interested 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 third party explaining why its information should not be released. Therefore, we have no basis to conclude 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 fund may not withhold any of the information at issue on the basis of any proprietary interest a third party may have in it.

We note some of the materials at issue may 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 copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, 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. As no other exceptions to disclosure have been raised, the submitted information must be released, but any information protected by copyright 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 450090

Enc. Submitted documents

c: Requestor
(w/o enclosures)

- c: Mr. Brian P. Nadeau
Vice President
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(w/o enclosures)
- c: Mr. Scott D. Rimmer
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