



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 24, 2013

Mr. Dan Junell  
Assistant General Counsel  
Teacher Retirement System of Texas  
1000 Red River Street  
Austin, Texas 78701-2698

OR2013-01381

Dear Mr. Junell:

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# 477144.

The Teacher Retirement System of Texas (the "system") received a request for (1) any agreements between the system and its custodial bank, State Street Bank & Trust Company ("State Street"), during a specified time period, including any addenda, amendments, fee schedules, and custodial bank guidelines referenced by the agreement; (2) the request for proposals issued by the system for custodial bank services during the same specified time period; and (3) State Street's response to the request for proposals.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.104, 552.110, 552.136, and 552.137 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of State Street. Accordingly, you have

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<sup>1</sup>We note the system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

notified State Street of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 considered the exceptions you claim and reviewed the submitted information.

Initially, you claim some of the submitted information is not responsive to the present request. The present request, in part, seeks any agreement, including amendments and fee schedules, between the system and State Street, during a specified time period. Upon review, we note the information at issue is a fee schedule attached to an amendment to an agreement between the system and State Street from the specified time period. Thus, we find the information at issue is responsive to the present request, and we will address your arguments against its disclosure.

Next, you inform us a portion of the remaining information is the subject of a previous ruling issued by this office. In Open Records Letter No. 2009-05729 (2009), this office determined the system (1) may withhold some of the information at issue under section 552.111 of the Government Code, (2) must withhold the insurance policy numbers we marked under section 552.136 of the Government Code, and (3) must release the remaining information at issue but only in accordance with copyright law. As we have no indication the law, facts, and circumstances upon which the previous ruling was based have changed, we determine the system must continue to rely on our ruling in Open Records Letter No. 2009-05729 as a previous determination and withhold or release the information you have indicated in accordance with that decision. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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 note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from State Street. Thus, we have no basis to conclude State Street has a protected proprietary interest in any of the remaining information. *See id.* § 552.110(a)-(b); 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 system may not withhold any of the remaining information on the basis of any proprietary interest State Street may have in the information.

Section 552.104 of the Government Code excepts from required public disclosure “information which, if released, would give advantage to competitors or bidders.” Gov’t Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except information pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990). However, this office has determined in some circumstances section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5.

You inform us some of the remaining information relates to an existing contract with State Street for custodial banking services. You further inform us the contract has an initial term beginning February 6, 2009, and expiring January 31, 2013. You state the contract provides for a two year extension beyond the initial term, and the system is currently in negotiations with State Street to extend the contract. However, if the negotiations are not successful, you state the system will have to immediately issue a new request for proposals for custodial banking services. You explain the system expects to receive bids from a limited pool of bank and trust companies capable of serving as the system’s custodial banking institution. You assert releasing the fee and service schedules you have marked would give potential bidders an unfair competitive advantage and compromise the system’s bargaining position in obtaining the best value for custodial banking services. Based on your representations and our review, we find the system has demonstrated that release of the information at issue would harm its interests in a competitive bidding situation. Accordingly, the system may withhold the fee and service schedules you have marked under section 552.104 of the Government Code until a new contract is executed.<sup>2</sup>

We note some of the remaining information appears 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 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.

In summary, the system must continue to rely on our ruling in Open Records Letter No. 2009-05729 as a previous determination and withhold or release the information you have indicated in accordance with that decision. The system may withhold the fee and

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

service schedules you have marked under section 552.104 of the Government Code until a new contract is executed. The system must release the remaining information; however, any information subject to copyright only may 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/som

Ref: ID# 477144

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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