



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2013

Mr. Jonathan Needle
Chief Legal Officer
Houston Firefighters' Relief and Retirement Fund
4225 Interwood North Parkway
Houston, Texas 77032-3866

OR2013-14359

Dear Mr. Needle:

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# 497841.

The Houston Firefighters' Relief and Retirement Fund (the "fund") received a request for information concerning Clairvue Capital Partners or any entity managed by Clairvue Principals (collectively "Clairvue"), specifically (1) solicitations and presentations seeking to attempt to convince the fund to invest or reinvest with Clairvue; (2) agreements between the fund and Clairvue regarding the performance of any investments the fund made in Clairvue, including quarterly and annual reports; (3) correspondence, if any, between the fund and Clairvue concerning Liquid Reality Partners or any of its affiliated companies, Scott Landress, or Clairvue; and (4) specified information subject to disclosure pursuant to sections 552.0225(b)(1)-(16). You state the fund has not entered into any agreement with Clairvue and only has information concerning its potential investment. Thus, you state the fund does not have any information to disclose pursuant to section 552.0225(b).¹ Although the fund takes no position on the release of the submitted information, you explain that it may contain proprietary information subject to exception under the Act. Accordingly, you

¹We note that Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

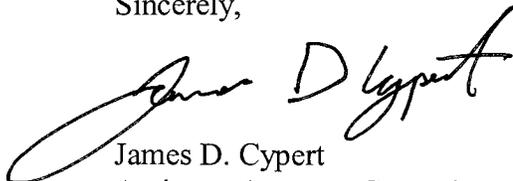
state, and provide documentation showing, that the fund notified Clairvue of this request for information and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to 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.

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 Clairvue on why the company's submitted information should not be released. Therefore, we have no basis to conclude Clairvue has protected proprietary interests 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 portion of the submitted information on the basis of any proprietary interest Clairvue may have in it. As no arguments against disclosure have been made, the submitted 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James D. Cypert
Assistant Attorney General
Open Records Division

JDC/ac

Ref: ID# 497841

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jeffrey Giller
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(w/o enclosures)