



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2013

Ms. Erin Perales
General Counsel
The Houston Municipal Employees Pension System
1201 Louisiana, Suite 900
Houston, Texas 77002

OR2013-19706

Dear Ms. Perales:

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# 505382.

The Houston Municipal Employees Pension System (the "system") received a request for information pertaining to the system's investments during a specified time, including the identifier and number of shares and the names of the asset manager or proxy voting advisor that controls the voting for the shares. You state you have released information subject to section 552.0225 of the Government Code. You claim the remaining requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state the release of the information at issue may implicate the proprietary interests of several third parties. Accordingly, you state and provide documentation showing that you have notified these interested third parties of this request and of their opportunity to submit comments to this office as to why the information at issue should not be released.¹ *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542

¹The interested third parties are: Thomas White International, Ltd. ("Thomas White"); DDJ Capital Management, LLC ("DDJ"); DePrince, Race & Zollo, Inc. ("DePrince"); EARNEST Partners, LLC; INTECH Investment Management, LLC ("INTECH"); Loomis Sayles & Company, L.P.; Neumeier Investment Council, LLC; OakBrook Investments, LLC ("OakBrook"); PanAgora Asset Management; Piedmont Investment Advisors, LLC; Profit Investment Management; OFI Institutional Asset Management; Tortoise Capital Advisors, LLC ("Tortoise"); and T. Rowe Price Associates, Inc. ("T. Rowe Price").

(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 the circumstances). We have received comments from DDJ, DePrince, Tortoise, Thomas White, OakBrook, INTECH, and T. Rowe Price.² We have considered the submitted arguments and reviewed the submitted representative sample of information.³

Initially, you state some of the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-10094 (2010). You state the law, facts, and circumstances upon which the prior ruling was based have not changed. Accordingly, the system must continue to rely on Open Records Letter No. 2010-10094 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. *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).

You assert the remaining information is excepted from disclosure under section 552.104 of the Government Code, which excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). This exception protects a governmental body’s interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

²We note INTECH argues against the disclosure of more information than was submitted for review by the system. This ruling will only address the information the system submitted as responsive to this office. *See* Gov’t Code § 552.301(e)(1)(D).

³We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You inform us the system has a specific marketplace interest with respect to the information at issue. You explain the system is “a significant investor in the market place and, through its investment managers, competes with other investors, including private pension funds, for the best rates, commissions, and trading terms.” You state release of the remaining information “could significantly hinder [the system]’s ability to compete in the investment marketplaces by negatively impacting the ability of the investment manager to negotiate favorable trades and to get the best price for its investment.” Based on these representations and our review, we find the system has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. Further, we find you have demonstrated that release of the information at issue would cause specific harm to the system’s marketplace interests. Accordingly, the system may withhold the remaining information under section 552.104 of the Government Code.⁴

In summary, with regard to the requested information that is identical to the information previously requested and ruled on by this office, we conclude the system must continue to rely on our ruling in Open Records Letter No. 2010-10094 as a previous determination and withhold or release the identical information at issue in accordance with that decision. The system may withhold the remaining information under section 552.104 of the Government Code.

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,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/eb6

⁴As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 505382

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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