



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2014

Ms. Michelle Mellon-Werch
Associate General Counsel
Texas Municipal Retirement System
P.O. Box 149153
Austin, Texas 78714-9153

OR2014-13008

Dear Ms. Mellon-Werch:

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# 530794.

The Texas Municipal Retirement System (the "system") received a request for a custody agreement between the system and State Street Corporation and State Street Bank and Trust Company (collectively, "State Street") in place as of 2007, as well as the new agreement negotiated in 2013.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state the instant request may implicate the proprietary interests of State Street. Accordingly, you notified State Street of the request and of its opportunity to submit comments to this office as to why the submitted 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

¹You state 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).

exception to disclose under Act in certain circumstances). We have received comments from State Street. We have considered the arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." 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, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1983) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis). Additionally, this office has held 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 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).

You seek to withhold the entirety of the submitted information under section 552.104. You state the information at issue relates to services by a custodial bank that performs important services necessary to the administration of the system and its billions of dollars in investments. Moreover, you inform us that the system will "periodically issue a request for proposals for custodial services to evaluate the services available in the market, including competitive market rates for compensation and fees." You assert the release of the information at issue would cause specific harm to the system's marketplace interests and could "significantly hinder [the system's] ability to compete in the marketplace by negatively impacting [its] ability to negotiate and compete for better rates and terms from State Street or other custodial banks." Based on your representations and our review, we find you have

demonstrated public release of the information we have marked pertaining to compensation and fees would cause specific harm to the system's competitive interests. Therefore, the system may withhold the information we have marked under section 552.104 of the Government Code.² However, we find you have not demonstrated the release of the remaining information would harm the system's interests in a particular competitive situation. Accordingly, the system may not withhold any of the remaining information under section 552.104 of the Government Code.

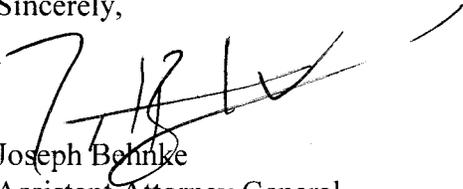
Section 552.136(b) of the Government Code states "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). Therefore, the system must withhold the information you have marked under section 552.136 of the Government Code.

In summary, the system may withhold the information we have marked under section 552.104 of the Government Code. The system must withhold the information you have marked under section 552.136 of the Government Code. The remaining information must be released to the requestor.

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

²As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

Ref: ID# 530794

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Kristen A. Kennedy
Vice President & Senior Managing Counsel
State Street
1200 Crown Colony Drive
Quincy, Massachusetts 02169
(w/o enclosures)