



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2016

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

OR2016-14686

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# 616866.

The Houston Municipal Employees Pension System (the "system") received a request for the pitchbook, board presentation, staff recommendation, and consultant recommendation related to two specified private equity real estate funds. You state you have no information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, 552.111, and 552.143 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Cliffwater, LLC ("Cliffwater"); GEM Realty Fund V, L.P. ("Fund V"); and GEM Realty Fund VI, L.P. ("Fund VI"). Accordingly, you state, and provide documentation showing, you notified Cliffwater, Fund V, and Fund VI of the request for information and of their rights 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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

circumstances). We have received comments from Cliffwater, Fund V, and Fund VI. We have reviewed the submitted information and the submitted arguments.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The system states it has specific marketplace interests in the information at issue because the system invests in private real estate investment funds, which in turn invest in and develop real property. The system states release of the submitted information would compromise the system’s negotiating position in future investment contracts. Further, the system states release of the submitted information “could allow competitors to use the information to compete for those properties and assets and harm [the system’s] interest in the [private real estate investment] funds.” After review of the information at issue and consideration of the arguments, we find the system has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a) of the Government Code.²

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Ref: ID# 616866

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)