



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 9, 2016

Ms. Claudene Marshall  
Assistant General Counsel  
Texas A&M University System  
301 Tarrow Street, 6th Floor  
College Station, Texas 77840-7896

OR2016-20339

Dear Ms. Marshall:

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# 625807 (Ref. No. W001073-062116).

Texas A&M University System (the "system") received a request for (1) all e-mails sent between the system treasury staff and LCG Associates, Inc. ("LCG") during a specified period of time and (2) all committee and board documents created or presented by LCG during a specified period of time. The system claims portions of the submitted information are excepted from disclosure under sections 552.104 and 552.143 of the Government Code. The system also states release of this information may implicate the proprietary interests of LCG. Accordingly, the system states, and provides documentation showing, it notified LCG of the request for information and of its right 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 circumstances). We have considered the exceptions the system claims and reviewed the submitted representative samples of information.<sup>1</sup>

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<sup>1</sup>We 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 those records contain substantially different types of information than that submitted to this office.

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 LCG explaining why the submitted information should not be released. Therefore, we have no basis to conclude LCG has a protected proprietary interest 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest LCG may have in the information.

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, 841 (Tex. 2015). The system states Exhibit B-2 pertains to a competitive bidding situation. In addition, the system states the sale to which Exhibit B-2 pertains has not been finalized and release of the information at issue would interfere with the system's ability to negotiate a sales price. After review of the information at issue and consideration of the arguments, we find the system has established the release of Exhibit B-2 would give advantage to a competitor or bidder. Thus, we conclude the system may withhold Exhibit B-2 under section 552.104(a) of the Government Code.

Section 552.143 of the Government Code provides, in relevant part, the following:

(b) Unless the information has been publicly released, pre-investment and post-investment diligence information, including reviews and analyses, prepared for or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

Gov't Code § 552.143(b). The system states Exhibit B-1 consists of investment advice and data provided by a private investment fund held by the system. We understand this information constitutes pre-investment due diligence information and has not been released to the public. We find this information is not subject to section 552.0225 or section 552.143(c) of the Government Code. Accordingly, the system must withhold Exhibit B-1 under section 552.143 of the Government Code.

In summary, the system may withhold Exhibit B-2 under section 552.104(a) of the Government Code. The system must withhold Exhibit B-1 under section 552.143 of the Government Code. The remaining 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](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,



Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/bw

Ref: ID# 625807

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)