



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1994

Ms. Janis W. Hydak
Assistant General Counsel
Teacher Retirement System
1000 Red River Street
Austin, Texas 78701-2698

OR94-297

Dear Ms. Hydak:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25313.

The Texas Teacher Retirement System (TRS) has received a request for information relating to its investments in the TCBY Tower in Little Rock, Arkansas. Specifically, the requestor wants to know when the loan was made; whether the original loan is intact or has been refinanced; whether the borrower defaulted on the loan; whether all payments have been made in a timely manner and in full; the amount of the monthly loan payment; the interest rate of the loan; and the projected payoff date of the loan. You advise us that TRS has made some of the requested information available to the requestor. You object, however, to release of information regarding the borrower's credit history, *e.g.*, information regarding whether the loan has been refinanced, whether the borrower has defaulted on the loan, and whether the borrower's loan payments have been timely made. In addition, you object to release of information revealing the amounts of monthly loan payments. You claim that sections 552.104 and 552.110 of the Government Code except this information from required public disclosure.

A prior decision of this office resolves your request. In Open Records Decision No. 593 (1991), this office found that TRS, as a governmental entity authorized by both constitutional and statutory law to invest its securities, could be considered, with regard to its investments in TCBY, to be a "competitor" for purposes of section 552.104 of the Government Code. Section 552.104 excepts from required public disclosure "information which, if released, would give advantage to a competitor or bidder." Article XVI, section 67 of the Texas Constitution authorizes the board of trustees of TRS to "invest the funds of the system in such securities as the board may consider prudent

investments." Tex. Const. art. XVI, § 67(a)(3). The constitution declares that the system shall invest its funds "in regard to the permanent disposition of [its] funds, considering the probable income therefrom as well as the probable safety of [its] capital." *Id.* The implicit charge to TRS is to generate profit through sound investment. Accordingly, information relating to TRS's investments in TCBY Tower may be withheld from required public disclosure upon a showing of the possibility of some specific harm in a particular competitive situation. *Id.*

We have considered your arguments. We note that the information at issue here is similar to the information addressed in Open Records Decision No. 593. We are persuaded by your arguments that disclosure of the information at issue here could cause specific harm to the legitimate marketplace interests of TRS. Accordingly, we conclude that you may withhold the requested credit history information and monthly loan payment information under section 552.104 of the Government Code. As we resolve this matter under section 552.104, we need not address the applicability of section 552.110 at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/GCK/sbm

Enclosed: Submitted documents

Ref.: ID# 25313

cc: Mr. John Haman
Associate Editor
Arkansas Times
P.O. Box 34010
Little Rock, Arkansas 72203
(w/o enclosures)

cc:

Mr. John J. Flake
Capitol Development Company
P.O. Box 990
Little Rock, Arkansas 72203
(w/o enclosures)

Mr. Donald T. Jack, Jr.
Jack, Lyon & Jones, P.A.
3400 TCBY Tower
425 West Capitol Avenue
Little Rock, Arkansas 72201-3472
(w/o enclosures)