



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 22, 1998

Ms. Erin Mack
General Counsel
Houston Municipal Employees Pension System
1111 Bagby, Suite 1450
Houston, Texas 77002-2503

OR98-1021

Dear Ms. Mack:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114433.

The Houston Municipal Employees Pension System (the "system") received three requests regarding the system's investments. Because the property and privacy rights of third parties may be implicated by the release of some of the requested information, this office notified the system's 13 investment management companies of these requests and of their opportunity to claim that the information at issue is excepted from disclosure. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision Nos. 575 (1990), 542 (1990) (determining that statutory predecessor to section 552.305 of the Government Code permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Two of the companies notified did not respond to our notice. However, Taplin, Canida & Habacht ("Taplin"), Neumeier Investment Counsel L.L.C. ("Neumier"), Putman Investments ("Putnam"), Barclays Global Investors ("Barclays"), Amerindo Investment Advisors, Inc. ("Amerindo"), IAI International Limited ("IAI"), Loomis, Sayles & Company, L.P. ("Loomis"), State Street Research & Management Company ("State Street"), Standish, Ayer & Wood, Inc. ("Standish"), Oechsle International Advisors ("Oechsle"), and Kopp Investment Advisors ("Kopp") responded to our notice claiming sections 552.104 and 552.110 of the Government Code protect the requested information from disclosure. In addition, the system asserts that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents you have submitted.¹

¹We assume that 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

Section 552.104 of the Government Code protects from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” The purpose of section 552.104 is to protect the government’s interests when it is involved in certain commercial transactions. For example, section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). In these situations, the exception protects the government’s interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the award of a contract. When a governmental body seeks protection as a competitor, however, we have stated that it must be afforded the right to claim the “competitive advantage” aspect of section 552.104 if it meets two criteria. The governmental body must first demonstrate that it has specific marketplace interests. Open Records Decision No. 593 (1991) at 4. Second, a governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *Id.* at 2. Whether release of particular information would harm the legitimate marketplace interests of a governmental body requires a showing of the possibility of some specific harm in a particular competitive situation. *Id.* at 5, 10.

Based upon our review of the submitted information and your arguments, we conclude that you have demonstrated actual or potential harm to the system’s interests in a particular competitive situation. You have shown that releasing the requested documents will bring about a specific harm. You may withhold the information submitted under section 552.104.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

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.

²Because we are able to make a determination under section 552.104, we do not address your additional argument against disclosure.

VDP/ghg

Ref.: ID# 114433

Enclosures: Submitted documents

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