



September 23, 1999

Ms. Belinda Perkins  
Assistant General Counsel  
Teacher Retirement System of Texas  
1000 Red River Street  
Austin, Texas 78701-2698

OR99-2695

Dear Ms. Perkins:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 127531.

The Teacher Retirement System of Texas (the "System") received requests from three requestors for a variety of information concerning the System, Crescent Real Estate Equities, and specified individuals. In response to the request, you submit to this office for review the information which you assert is responsive. You state that a portion of the requested information, responsive to one request, will be released to the requestor. Although you represent that "TRS takes no position on this matter," you explain that the submitted information may be proprietary in nature and protected from disclosure by sections 552.101 and 552.110 of the Government Code.<sup>1</sup> We have considered the exceptions and arguments you have raised and reviewed the submitted information.<sup>2</sup>

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<sup>1</sup>In addition, we note that in your correspondence to the requestors, you also claim that a portion of the requested information may be protected by Government Code sections 552.104 and 552.146. However, since you did not provide records which would appear to implicate these exceptions, nor submit arguments in support of the raised exceptions, we will not address them in this ruling. We assume that your reference to section 552.146 was merely a typographical error, since the correct provision to raise for "closed meetings" is section 551.146. Section 551.146 provides that it is criminal offense to disclose to member of public certified agenda or audiotape recording of closed meeting.

<sup>2</sup>We assume that you will release other responsive records to the extent they exist, since you have not raised any other exceptions, nor submitted other records.

At the outset, we note that with respect to two of the requests, you claim that the information sought is “somewhat broad and unclear” or vague; therefore, you have provided the requestors with “cost estimates”<sup>3</sup> and sought clarification of the request. First, we address the issue of a vague or broad request. We note that when a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow or clarify his request. Open Records Decision Nos. 563 (1990), 561 (1990). Furthermore, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 561 (1990), 555 (1990), 379 (1983), 347 (1982). In other words, if the System is able to identify documents in its possession from which the requestor could obtain the information that they are seeking, the System should provide the requestor access to those documents, unless the information is subject to an exception.<sup>4</sup>

Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified Crescent Real Estate Equities, L.P. (“Crescent”) about the request for information. 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 No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). The notification states that if the company does not respond within 14 days of receipt, this office will assume that the company has no privacy or property interest in the requested information. Although our office did not receive a response to our notification, Crescent, through its attorney, submitted a letter to the System, dated June 30, 1999, which states that “it appears that disclosure is not required based upon Section 552.110.” Accordingly, we will consider whether the information at issue is excepted from disclosure under the claimed exceptions.

Section 552.110 protects the property interests of private persons by excepting from disclosure two categories of information: (1) “[a] trade secret” and (2) “commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.” This office cannot conclude that information is a trade secret unless the

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<sup>3</sup>Generally, the charges for providing public information are established by the General Services Commission. Gov’t Code § 552.262.

<sup>4</sup>We note that Chapter 552 of the Government Code does not apply to information that does not exist. See Open Records Decision No. 555 (1990). Nor does chapter 552 require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio, 1978, writ dismissed); see also Open Records Decision No. 87 (1975).

governmental body or company has provided evidence of the factors necessary to establish a trade secret claim. Open Records Decision No. 402 (1983). Facts sufficient to show the applicability of these factors have not been provided. See Open Records Decision No. 363 (1983) (third party duty to establish how and why exception protects particular information). Therefore, the requested information is not excepted from disclosure under the trade secret prong of section 552.110.

We next consider whether the information at issue constitutes “commercial or financial information.” Commercial or financial information is excepted from disclosure under the second prong of section 552.110. In the submitted letter, Crescent’s counsel summarily states that “Crescent objects to the release of any contracts between TRS (or any of its affiliates) and Crescent (and any of its affiliates).”<sup>5</sup> In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts’ interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110 for commercial and financial information. *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Thus, this office relied on *National Parks*, as a judicial decision and applied the standard set out in *National Parks* to determine whether information is excepted from public disclosure under the commercial and financial prong of section 552.110. However, the Third Court of Appeals recently held that *National Parks* is not a judicial decision within the meaning of section 552.110. See *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App. – Austin 1999, pet. filed). The brief submitted on behalf of Crescent does not cite to a statute or judicial decision that makes the submitted information privileged or confidential. Therefore, the requested information may not be withheld from disclosure under the commercial or financial information prong of section 552.110. Accordingly, we conclude that the requested information is not excepted from disclosure pursuant to section 552.110.<sup>6</sup>

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<sup>5</sup>Information is not confidential under the Public Information Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

<sup>6</sup>We note that section 552.110 has been amended by the Seventy-sixth Legislature, effective September 1, 1999. Act of May 25, 1999, Seventy-sixth Legislature, R.S., S.B. 1851, § 7. Under the amendment, commercial or financial information will be excepted from disclosure if “it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” The amendment applies to requests for attorney general decisions made on or after September 1, 1999. Id. § 36.

Finally, we consider whether section 552.101 excepts any of the submitted information. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision.<sup>7</sup> We have examined the submitted information and we are not aware of any law that makes the requested information confidential, nor do you raise any such law. Accordingly, we conclude the System may not withhold the submitted information based on section 552.101 of the Government Code.

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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref: ID# 127531

Encl. Submitted documents

cc: Ms. Annys Shin  
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<sup>7</sup>Corporations do not have a protected common-law privacy interest in financial information. Open Records Decision Nos. 620 (1993), 192 (1978).

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