



October 29, 2001

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

OR2001-4914

Dear Ms. Perkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154154.

The Teacher Retirement System of Texas ("TRS") received a request for information regarding entities offering to provide brokerage services for the system. You state that TRS has already provided the requestor with some of the requested information. You claim, however, that the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, and 552.111 of the Government Code. You also state that the submitted information may contain proprietary information that is protected from disclosure. You state that you have notified the third parties whose information is at issue in the current request pursuant to section 552.305 of the Government Code.<sup>1</sup> *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). In turn, we have received arguments from BOE Securities ("BOE"), PCS Securities, Inc. ("PCS"), Score Asset Management ("Score"), Standard & Poor's Securities, Inc. ("SPSI"), and Utendahl Capital Partners, L.P. ("Utendahl"). We have considered all of the submitted arguments and reviewed the submitted information.

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<sup>1</sup> We note that the requestor's initial request encompassed information regarding over one hundred third parties. However, the requestor has modified his request by indicating that he is only seeking information regarding twenty five specific third parties.

The authority asserts that the submitted information is excepted from disclosure under section 552.104 of the Government Code. The Seventy-seventh Legislature enacted Senate Bill 1458, which amended section 552.104 by adding subsection (b) as follows:

The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under [section 552.104].

Gov't Code § 552.104(b). Senate Bill 1458 became effective on June 15, 2001, and is therefore applicable to this ruling. *See* Act of May 27, 2001, 77th Leg., R.S., S.B. 1458, § 7.01 (to be codified at Gov't Code § 552.104).

Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision 541 (1990). In this case, you indicate that TRS continually seeks brokerage firms to provide brokerage and research services to TRS. We understand that TRS is involved in an ongoing process of recruiting and monitoring brokerage firms. You further represent that brokerage firms compete with each other for clients, and with regard to shared clients, for a bigger share of the client's trading volume. You argue that the quality of the brokerage services TRS receives affects the performance of its investments and that release of the requested information would have a detrimental impact on TRS's ability to recruit and receive high quality brokerage services. Based on these representations and our review of the submitted information, we conclude that TRS has demonstrated that public release of the information at issue would cause potential harm to the TRS's interests in a particular competitive bidding situation. Therefore, the submitted information is excepted from disclosure based on section 552.104. In light of our conclusion under section 552.104, we need not address the other exceptions raised.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 154154

Enc: Submitted documents

c: Mr. Stephen P. Arnold  
Vice President  
Southwest Capitol Marketers, Inc.  
Investment Bankers  
1100 N.W. Loop 410, Suite 700  
San Antonio, Texas 78213  
(w/o enclosures)

Third Party List