



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2004

Mr. Everard Davenport
General Counsel
Dallas Police and Fire Pension System
2301 N. Akard Street, Suite 200
Dallas, Texas 75201

OR2004-2110

Dear Mr. Davenport:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197174.

The Dallas Police and Fire Pension System (the "system") received a request for information concerning the system's real estate investments. You inform us that you will release a portion of the requested information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.105, and 552.113 of the Government Code. You also indicate that release of the remaining requested information would implicate the proprietary interests of certain third parties; namely Oaktree Capital Management ("OCM"), Olympus Real Estate Partners, L.L.C. ("Olympus"), Prudential Investment Management, Inc. ("Prudential"), Crow Holdings Realty Partners II ("Crow"), and Lone Star Opportunity Fund, L.P., Lone Star Fund II (U.S.), L.P., Lone Star Fund III (U.S.), L.P., and Lone Star Fund IV (U.S.), L.P. (collectively "Lone Star"). We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the system's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request for information (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You have not submitted any responsive information for OCM, Olympus, Prudential, or Crow to this office for review.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by law or affects third party interests. *See* Open Records Decision No. 150 (1977). You raise section 552.105 of the Government Code. However, section 552.105 is a discretionary exception and does not provide a compelling reason to overcome the presumption that the information is public. *See* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). You also claim that sections 552.101 and 552.113 of the Government Code except the information from disclosure. Although sections 552.101 and 552.113 may provide a compelling reason to withhold information from disclosure, because the system did not submit the responsive information for OCM, Olympus, Prudential, or Crow to this office for review, we have no basis to find that sections 552.101 and 552.113 are applicable to the information. Accordingly, we have no choice but to order the responsive information for OCM, Olympus, Prudential, and Crow released pursuant to section 552.302 of the Government Code. If you believe that this information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

You did, however, submit the responsive information for Lone Star to this office for review. You claim that this information is excepted from disclosure under sections 552.101 and 552.113 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.113 protects certain "geological or geophysical information or data." Although you raised sections 552.101 and 552.113, you failed to submit any arguments explaining how these exceptions apply to the submitted information. *See* Gov't Code § 552.301(e) (governmental body must submit written comments stating the reasons why the stated exceptions apply to the requested information). Therefore, you may not withhold the submitted information under sections 552.101 and 552.113 of the Government Code.

You also raise section 552.105 of the Government Code. This exception protects information relating to the location, appraisals, and purchase price of property only until the transaction is either completed or aborted. *See* Open Records Decision Nos. 357 at 3 (1982), 310 at 2 (1982). Therefore, section 552.105 is temporal in nature. Because you failed to adequately demonstrate that Lone Star's information relates to an on-going property transaction, you may not withhold Lone Star's information under section 552.105 of the Government Code.

Pursuant to section 552.305 of the Government Code, the system notified Lone Star of its right to submit arguments to this office explaining why its information should not be released. *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 to disclosure in certain circumstances). Lone Star responded to the notice and claims that its information is excepted from disclosure under sections 552.101, 552.104, 552.105, and 552.110 of the Government Code. Section 552.110(b) excepts commercial or financial information for which it is demonstrated based on a specific factual or evidentiary showing that substantial competitive injury would likely result from release of the information at issue. *See National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); *see also* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Lone Star states that release of its information would give its competitors a competitive advantage over Lone Star with respect to the purchase of specific investments, negotiations of contracts to sell specific investments, and during efforts to raise additional investment capital. Therefore, after reviewing Lone Star's arguments and its information, we conclude that Lone Star has demonstrated the applicability of section 552.110(b) of the Government Code to its information. Therefore, the system must withhold Lone Star's information from disclosure under section 552.110(b) of the Government Code.¹

In summary, you must withhold Lone Star's information under section 552.110(b) of the Government Code. The remaining information must be released.

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

¹As we are able to resolve this matter under section 552.110(b) of the Government Code, we need not address Lone Star's additional arguments against disclosure.

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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 197174

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