ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2009

Ms. Melynda Shepherd
Public Information Coordinator
University of Texas Investment Management Company
401 Congress Avenue, Suite 2800
Austin, Texas 78701

OR2009-06195

Dear Ms. Shepherd:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 342420.

The University of Texas Investment Management Company ("UTIMCO") received a request for a copy of the report by the National Association of College and University Business Officers ("NACUBO") showing university-by-university endowment performance for one-year, 10-year, and other periods of time ending June 30, 2008. You claim that the requested information is subject to section 552.027 of the Government Code. You also state that release of the requested information could implicate the proprietary interests of NACUBO. Accordingly, you state, and provide documentation showing, that you notified NACUBO of UTIMCO's receipt of the request for information and NACUBO's right to submit arguments to this office as to why the information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received arguments from NACUBO. We have considered the submitted arguments and reviewed the submitted information. We have also received comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Both UTIMCO and NACUBO argue that the submitted information is not subject to disclosure under the Act because the report is commercially available to the requestor. Section 552.027 provides as follows:

> (a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.
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> (b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.
>
> (c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Id. § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals.

UTIMCO and NACUBO both state that the submitted information consists of a report that UTIMCO acquired from NACUBO for research purposes and that is available for sale on NACUBO's website to NACUBO members as well as the public at large. UTIMCO indicates that the report is not made part of, incorporated into, or referred to in a rule or policy of UTIMCO. The requestor, however, asserts that the requested report is not commercially available because the report he seeks is different from the report that NACUBO offers for sale to the public on their website. UTIMCO has informed our office that the submitted report is the same report that is available on NACUBO's website. Whether the information at issue is identical to the information that is on NACUBO's website is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Thus, based on UTIMCO's representations, we find that the report at issue is "information in a commercial book or publication purchased or acquired by the governmental body for research purposes ... [and is] commercially available to the public." Gov't Code § 552.027(a). Accordingly, the requested information falls within the scope of section 552.027 and need not be released. As our ruling is dispositive, we need not address NACUBO's remaining argument against disclosure.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 342420

Enc. Submitted documents

c: Requestor
(w/o enclosures)