



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 28, 2010

Mr. James G. Nolan  
Assistant General Counsel  
Texas Comptroller of Public Accounts  
P. O. Box 13528  
Austin, Texas 78711-3528

OR2010-01365

Dear Mr. Nolan:

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# 368782 (CPA ORTS# 5997930238).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for the contracts, proposals, and bids of the most recent clearing bank agreement. Although you take no position with respect to the requested information, you state that the release of the submitted information may implicate the proprietary interests of Bank of America Merrill Lynch (the "bank"). Accordingly, you state you have notified the bank of this request and of its right to submit arguments stating why its information should not be released. *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 reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, the bank has not submitted to this office reasons explaining why its information should not be released. Therefore, the bank has provided us with no basis to conclude it has protected proprietary interests in the submitted information. Accordingly, the comptroller may not withhold any portion of the submitted

information on the basis of any proprietary interest the bank may have in this information. See Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). As you raise no exceptions to disclosure, the submitted information must be released to the requestor.

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](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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 368782

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: Ms. Kathaleen Ford Smith  
Senior Vice President, Government  
Bank of America Merrill Lynch  
515 Congress Avenue, Suite 1100  
Austin, Texas 78701  
(w/o enclosures)