



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2011

Mr. Warren M. S. Ernst
Chief of the General Counsel Division
Office of the City Attorney
City of Dallas
1500 Marilla Street, Room 7BN
Dallas, Texas 75201

OR2011-12349

Dear Mr. Ernst:

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# 427991.

The City of Dallas (the "city") received a request for proposals submitted in response to an RFP for underwriting services during a specified time period. Although you take no position with respect to the public availability of the submitted information, you state that it may contain proprietary information subject to exception under the Act. Accordingly, you state you notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory

¹The interested third parties are: Bank of America Merrill Lynch; Bank of Texas, N.A.; Barclays Capital; BB & T Capital Markets; BOSC, Inc.; Cabrera Capital Markets, L.L.C.; Citigroup Global Markets, Inc.; Coastal Securities, Inc.; Crew & Associates; Deutsche Bank Trust Company of Americas ("Deutsche"); Duncan-Williams, Inc.; Edward Jones; Fidelity Capital Markets; Frost National Bank; Goldman Sachs & Co.; J.P. Morgan Chase Bank, NA; J.P. Morgan Securities, Inc.; Jackson Securities; Jefferies & Company, Inc.; Loop Capital Markets, LLC; M.E. Allison & Co., Inc.; M.R. Beal & Company; Mesirow Financial, Inc.; Morgan Keegan & Co., Inc.; Morgan Stanley; Piper Jaffray Companies; Raymond James & Associates, Inc.; RBC Capital Markets; Rice Financial Products Company; Robert W. Baird & Co., Inc.; Samco Capital Markets, Inc.; Samuel A. Ramirez & Company, Inc.; Siebert Brandford Shank & Co.; Southwest Securities, Inc.; Stephens, Inc.; Stern Brothers & Co.; Sterne, Agee & Leach, Inc. ("Sterne Agee & Leach"); Stifel, Nicolaus & Company, Inc.; U.S. Bancorp Municipal Securities Group ("U.S. Bank"); Wells Fargo Securities.

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). Morgan Stanley informs us it does not object to the release of its information. Further, we have received comments from a representative of Sterne Agee & Leach stating the company does not object to the release of its information. We have also received comments from U.S. Bank. We have considered the submitted arguments and reviewed the submitted information.

Initially, U.S. Bank argues, and we agree, you have submitted information that is not responsive to the instant request. The requestor seeks proposals submitted in response to an RFP for underwriting services. You have submitted responses to this RFP, as well as responses to RFPs for commercial paper dealer services, liquidity provider, and issuing and paying agent services. Thus, only the proposals submitted in response to the RFP for underwriting services are responsive to the request for information. This ruling does not address the public availability of non-responsive information, and such information need not be released in response to this request.

Next, you acknowledge, and we agree, the city failed to comply with section 552.301 of the Government Code in requesting an open records decision from our office. Gov't Code § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of 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 id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, orig. proceeding); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, orig. proceeding) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). The presumption information is public under section 552.302 can be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider the interests of the third-parties.

We note 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any comments from the interested third parties objecting to the release of the responsive information. Thus, none of the interested third parties have demonstrated they have a protected proprietary interest in any of the responsive information. *See id.* § 552.110(a)-(b); 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). Accordingly, the city may not withhold any of the responsive information based on the proprietary interests of the interested third parties.

We note some of the responsive information is subject to common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983). The responsive information contains business ownership percentages. This personal financial information is intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold this personal financial information, which we have marked, under section 552.101 in conjunction with common-law privacy.

We also note some of the responsive information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining responsive information must be released, but any information that is protected by copyright may only be released in accordance with copyright law.

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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 427991

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Curt Shelmire
Bank of America
200 Crescent Court, Suite 1340
Dallas, Texas 75201

Mr. Michael Feist
Bank of America Merrill Lynch
501 Main Street
Dallas, Texas 75202

Mr. Brian T. Moynihan
Bank of America Corporation
100 N. Tryon Street
Charlotte, North Carolina 28255

Mr. John T. Daniel
Barclays Capital
745 Seventh Avenue
New York, New York 10018

Mr. Sean E. Ekiert
BB & T Capital Markets
909 East Main Street
Richmond, Virginia 23219

Mr. Scott Gauer
BOSC, Inc.
7600 West Northwest Highway
Dallas, Texas 75225

Mr. Mitch Kapnick
Cabrera Capital Markets, L.L.C.
10 South LaSalle, Suite 1050
Chicago, Illinois 60603

Mr. John C. Gerspach
Citigroup Global Markets, Inc.
399 Park Avenue
New York, New York 10043

Mr. Anderson Bynam
Citigroup Global Markets, Inc.
2000 W. Sam Houston Parkway, Suite 600
Houston, Texas 77042

Mr. Todd H. Holder
Citigroup Global Markets, Inc.
200 Crescent Court, Suite 380
Dallas, Texas 75201

Mr. David Holland
Coastal Securities, Inc.
5555 San Felipe, Suite 2200
Houston, Texas 77056

Ms. Wendy Wipperman
Crews & Associates
8117 Preston Road, Suite 300
Dallas, Texas 75225

Attn: Municipal Services
Deutsche Bank Trust Company of Americas
60 Wall Street, 27th Floor
New York, New York 10017

Ms. Maria Saldana
Duncan-Williams, Inc.
203 N. LaSalle Street, Suite 2100
Chicago, Illinois 60601

Mr. David Faris
Edward Jones
4500 Bissonnet Street, Suite 357
Bellaire, Texas 77401

Ms. Kimberly K. Edwards
Fidelity Capital Markets
7000 Mopac Expressway, Suite 2107
Austin, Texas 78731

Mr. Phillip D. Green
Frost National Bank
100 W. Houston Street at Main
San Antonio, Texas 78205

Mr. Jeff Scruggs
Goldman, Sachs & Co.
200 West Street, 3rd Floor
New York, New York 10001

Mr. Terry Thornton
Goldman, Sachs & Co.
1000 Louisiana Street, 11th Floor
Houston, Texas 77002

Mr. David M. Bayer
J.P. Morgan Chase Bank, NA
383 Madison Avenue, Floor 8
New York, New York 10179

Mr. Don E. Wilborn
J.P. Morgan Securities, Inc.
10 South Dearborn, Floor 43
Chicago, Illinois 60603

Riley Simmons
Jackson Securities
3102 Oak Lawn Avenue
Dallas, Texas 75219

Tilghman Naylor
Jefferies & Company, Inc.
13355 Noel Road, Suite 1400
Dallas, Texas 75240

Mr. Frank Sanchez
Loop Capital Markets, L.L.C.
2911 Turtle Creek Boulevard, Suite 3045
Dallas, Texas 75219

Mr. Christopher R. Allison
M.E. Allison & Co., Inc.
950 East Basse Road, Second Floor
San Antonio, Texas 78209-1831

Mr. Stanley E. Grayson
M.R. Beal & Company
110 Wall Street, 6th Floor
New York, New York 10005

Mr. Desrye M. Morgan
Mesirow Financial, Inc.
1200 Smith Street, Suite 1600
Houston, Texas 77002

Mr. Thomas K. Oppenheim
Morgan Keegan & Co., Inc.
5956 Sherry Lane, Suite 1900
Dallas, Texas 75225

Mr. James P. Gorman
Morgan Stanley
1585 Broadway
New York, New York 10036

Mr. Daniel C. Roseveare
Pier Jaffray Companies
3333 Lee Parkway, Suite 600
Dallas, Texas 75219

Mr. Gary Machak
Raymond James & Associates, Inc.
2001 Ross Avenue, Suite 4500
Dallas, Texas 75201

Mr. Douglas R. Hartman
RBC Capital Markets
2711 N. Haskell Avenue, Suite 2500
Dallas, Texas 75204

Mr. Leonard Jones
Rice Financial Products Company
333 Clay Street, Suite 3010
Houston, Texas 77002

Ms. Ann E. Gifford
Robert W. Baird & Co., Inc.
210 University Blvd., Suite 900
Denver, Colorado 80206

Mr. Duane L. Westerman
Samco Capital Markets, Inc.
8700 Crownhill Boulevard, Suite 601
San Antonio, Texas 78209

Mr. Art Morales
Samuel A. Ramirez & Company, Inc.
2323 S. Shepard, Suite 930
Houston, Texas 77019

Mr. Daniel Diaz
Siebert Brandford Shank & Co.
1999 Harrison St., Suite 2720
Oakland, California 94612

Mr. Richard H. Litton
Southwest Securities, Inc.
1201 Elm Street, Suite 3500
Dallas, Texas 75270-2180

Mr. R.R. Davenport, Sr.
Stephens, Inc.
300 Crescent Court, Suite 600
Dallas, Texas 75201

Ms. Alicea Fletcher
Stern Brothers & Co.
600 North Pearl
Dallas, Texas 75201

Mr. Vincent J. Graffeo
Haskell Slaughter Young & Rediker, L.L.C.
For Sterne Agee & Leach, Inc.
1400 Park Place Tower
Birmingham, Alabama 35203

Ms. Nora W. Chavez
Stifel, Nicolaus & Company, Inc.
70 NE Loop 410, Suite 295
San Antonio, Texas 78216

Mr. Leon J. Bijou
U.S. Bancorp Municipal Securities Group
461 Fifth Avenue, 10th Floor
New York, New York 10017

Mr. Frank Fraley
Wells Fargo Securities
375 Park Avenue, 6th Floor
New York, New York 10152