



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2012

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

OR2012-07033

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# 453479.

The University of Texas Investment Management Company ("UTIMCO") received a request for information pertaining to a specified document regarding UTIMCO's management of other investments, personal financial disclosures filed by current outside board members, and all code of conduct agreements signed by board and staff members.<sup>1</sup> You state you have made some of the requested information available and that, as permitted by section 552.024(c) of the Government Code, you will redact certain information subject to section 552.117 of the Government Code.<sup>2</sup> You claim the submitted information is excepted

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<sup>1</sup>You note that UTIMCO sought and received a clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. Gov't Code § 552.117(a). Section 552.024(c) of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id.* §§ 552.024(c), .117(a).

from disclosure under sections 552.101, 552.110, and 552.117 of the Government Code. You also state you have notified outside board members of the request for information and of their rights to submit arguments to this office as to why their 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 received comments from some of the outside board members.<sup>3</sup> We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>4</sup>

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See 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 excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Whether there is a public interest in this information sufficient to justify its disclosure must be decided on a case-by-case basis. Open Records Decision No. 523 at 4.

Upon review of the submitted information, we find this information is highly intimate and embarrassing and of no legitimate public interest. Therefore, UTIMCO must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>5</sup> *See* Open Records Letter Nos. 2010-18675 (2010), 1999-3349 (1999), 1998-1755 (1998), and 1997-1776 (1997).

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<sup>3</sup>We note some of these outside board members incorporate UTIMCO's arguments by reference.

<sup>4</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

<sup>5</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 453479

Enc. Submitted documents

c: Requestor  
(w/o enclosures)