



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2013

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

OR2013-11615

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# 492538.

The University of Texas Investment Management Company ("UTIMCO") received a request for all e-mails between two named individuals and anyone at Austin Ventures from January 1, 2012 to the date of this request, outgoing e-mails from the two named individuals for the first ten days of March, UTIMCO's rules for expenses reimbursements, itemized expenses for the two named individuals from January 1, 2013 to the date of this request, and a list of all consultant studies paid for by UTIMCO since January 1, 2011. You state you have released most of the requested information. You state portions of the submitted information are excepted from disclosure under sections 552.1235, 552.104, and 552.143 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of third parties.¹ Accordingly, you state, and provide documentation showing, you have notified these parties of the request and of their right to submit arguments to this office as to why the submitted 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)

¹We note the submitted information pertains to the following third parties: Morgan Stanley Research; Intellectual Ventures Management, LLC ("IVM"); GSV Capital Corporation; Emerald Hill Capital Partner Limited; Commonfund; Asianomics Limited; The Investment Fund for Foundations; and PennantPark Investment Advisers.

(statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have received comments from IVM. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address UTIMCO's procedural obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving a written request for information. Gov't Code § 552.301(b). UTIMCO received the request for information on April 18, 2013. Accordingly, UTIMCO's ten-business-day deadline was May 2, 2013. While you raised sections 552.104 and 552.143 within the ten-business-day time period as required by section 552.301(b), you did not raise section 552.1235 until May 8, 2013. Thus, UTIMCO failed to comply with the requirements of section 552.301(b) as to its arguments under section 552.1235 of the Government Code.

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 the information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where an exception designed to protect the interest of a third party is applicable. *See* Open Records Decision No. 150 at 2 (1977). As section 552.1235 can provide a compelling reason against disclosure, we will address the applicability of that section to the submitted information.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from any of the remaining third parties. Thus, these remaining third parties have not demonstrated they have a protected proprietary interest in any of the submitted 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. Accordingly, UTIMCO may not withhold the submitted information on the basis of any proprietary interests these third parties may have in the information.

Section 552.143 provides, in part, the following:

(a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from the requirements of Section 552.021.

(b) Unless the information has been publicly released, pre-investment and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure under Subsection (c).

Gov't Code § 552.143 (a), (b). You inform us UTIMCO is an investment advisor to the Board of Regents of The University of Texas System (the "Board of Regents"). You further inform us that as an investment advisor, you are authorized to invest assets under the control and management of the Board of Regents. You state the information you have marked consists of pre-investment and post-investment due diligence information prepared by UTIMCO staff or third party private investment information provided to UTIMCO in order to evaluate possible investment in these funds. You inform us UTIMCO did not invest in these funds and that the submitted information has not been released to the public. You also state that none of the information is subject to section 552.143(c) of the Government Code. Based on your representations and our review, we agree UTIMCO must withhold the information you have marked under section 552.143(b) of the Government Code.²

Section 552.1235 excepts from disclosure "the name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]" *Id.* § 552.1235(a). For purposes of this exception, "institution of higher education" is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an "institution of higher education" as meaning "any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section." Educ. Code § 61.003(8). Because section 552.1235 does not provide a definition of "person," we look to the definition provided in the Code Construction Act. *See* Gov't Code § 311.005. "Person" includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2).

You have marked the information you seek to withhold under section 552.1235. You inform us this information identifies a donor to the University of Texas at Austin (the "university"). Based on your representations and our review, we agree the information you have marked identifies a person who is a donor to the university. Accordingly, we conclude UTIMCO must withhold the information you have marked under section 552.1235 of the Government Code.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

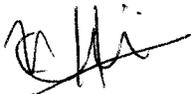
Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ See Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, UTIMCO must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.⁴

In summary, UTIMCO must withhold the information you have marked under sections 552.1235 and 552.143 of the Government Code. UTIMCO must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Thana Hussaini
Assistant Attorney General
Open Records Division

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³The 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).

⁴Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 492538

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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