



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 19, 2013

Mr. Gary B. Lawson  
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OR2013-16280

Dear Mr. Lawson:

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# 499793.

The Dallas Police and Fire Pension System (the "system") received a request for the "Texas Municipal Plans Consortium, LLC ("TMPC")'s Portfolio Review prepared by the Hancock Agriculture Investment Group ("HAIG") for 2010, 2011, 2012, and 2013." You claim the submitted information is excepted from disclosure under sections 552.104, 552.105, and 552.110 of the Government Code. You also state release of this information may implicate the proprietary interests of HAIG. Accordingly, you have notified HAIG of the request for information and of its right to submit arguments to this office as to why the requested 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) (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 HAIG. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the system did not submit a portfolio review for the year 2013. To the extent this information existed at the time the system received the instant request, we assume

the system has released it to the requestor. If not, then the system must do so immediately. *See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).*

Next, we note you argue some of the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See Gov't Code § 552.110.* We note, however, section 552.110 is designed to protect the interests of third parties not the interests of a governmental body. Thus, we will not consider the system's arguments under section 552.110, and none of the submitted information may be withheld under section 552.110 on the basis of the system's interests.

We note some of the information you have marked is investment information that is subject to section 552.0225 of the Government Code. Section 552.0225(b) provides as follows:

The following categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under [the Act]:

- (1) the name of any fund or investment entity the governmental body is or has invested in;
- (2) the date that a fund or investment entity described by Subdivision (1) was established;
- (3) each date the governmental body invested in a fund or investment entity described by Subdivision (1);
- (4) the amount of money, expressed in dollars, the governmental body has committed to a fund or investment entity;
- (5) the amount of money, expressed in dollars, the governmental body is investing or has invested in any fund or investment entity;
- (6) the total amount of money, expressed in dollars, the governmental body received from any fund or investment entity in connection with an investment;
- (7) the internal rate of return or other standard used by a governmental body in connection with each fund or investment entity it is or has invested in and the date on which the return or other standard was calculated;

(8) the remaining value of any fund or investment entity the governmental body is or has invested in;

(9) the total amount of fees, including expenses, charges, and other compensation, assessed against the governmental body by, or paid by the governmental body to, any fund or investment entity or principal of any fund or investment entity in which the governmental body is or has invested;

(10) the names of the principals responsible for managing any fund or investment entity in which the governmental body is or has invested;

(11) each recusal filed by a member of the governing board in connection with a deliberation or action of the governmental body relating to an investment;

(12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity;

(13) the minutes and audio or video recordings of each open portion of a meeting of the governmental body at which an item described by this subsection was discussed;

(14) the governmental body's percentage ownership interest in a fund or investment entity the governmental body is or has invested in;

(15) any annual ethics disclosure report submitted to the governmental body by a fund or investment entity the governmental body is or has invested in; and

(16) the cash-on-cash return realized by the governmental body for a fund or investment entity the governmental body is or has invested in.

Gov't Code § 552.0225(b). The system argues some of the submitted information is excepted under sections 552.104 and 552.105 of the Government Code. Further, HAIG argues the submitted information is excepted from disclosure under section 552.110 of the Government Code. However, the exceptions to disclosure found in the Act, including sections 552.104, 552.105, and 552.110 do not apply to information that is made public by section 552.0225. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the types of information enumerated in section 552.0225(b) of the Government Code must be released to the requestor.

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This exception protects a governmental body’s interests in competitive bidding and certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You inform us the system has a specific marketplace interest with respect to the information at issue. You explain the system invests in real estate through TMPC, which acquires, holds title to, and develops farm properties. You explain the system is consistently competing with private and public enterprises for agriculture real estate and for potential lessees to operate the properties. Thus, we find the system has demonstrated a specific marketplace interest and may be a competitor in the marketplace for purposes of section 552.104 of the Government Code.

You assert the system has an ongoing interest in the performance of these real properties and continually evaluates how best to manage these investments. You state that if the requested information is made public, it would put the system at a substantial disadvantage because competitors could use the information to adjust their pricing to be more competitive, and the system and TMPC would lose substantial revenue and value on its investments. You also assert because the system competes with private enterprises, the disclosure of the value, location, and methods of operations of its investments will cause specific harm to the system’s marketplace interest. Based on these representations and our review, we find you have demonstrated that release of the information you have marked would cause specific harm to the system’s marketplace interests. Accordingly, the system may withhold the remaining information you have marked under section 552.104 of the Government Code.<sup>1</sup>

In summary, the types of information enumerated in section 552.0225(b) of the Government Code must be released to the requestor. The system may withhold the remaining information you have marked under section 552.104 of the Government Code. The system must release the remaining submitted information.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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

TH/som

Ref: ID# 499793

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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