



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 27, 2014

Mr. Gary B. Lawson  
Counsel for the Dallas Police & Fire Pension System  
Strasburger & Price  
901 Main Street, Suite 4400  
Dallas, Texas 75202-3794

OR2014-11060

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# 527226.

The Dallas Police & Fire Pension System (the “system”), which you represent, received a request for copies of all contracts executed in 2014 between the system and a specified firm. You claim the submitted information is excepted from disclosure under sections 552.103, 552.104, 552.111, and 552.143 of the Government Code and privileged under rule 192.3 of the Texas Rules of Civil Procedure.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information consists of a contract related to the expenditure of public funds by the system. Thus, this information is subject to section 552.022(a)(3) of the Government Code, and it may not be withhold under the Act unless “expressly confidential under other law.” Gov’t Code § 552.022(a)(3). Sections 552.103 and 552.111 do not make information confidential. *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475–76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with rule 192.3, this office has determined section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1–2 (2002).

exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111). Accordingly, the system may not withhold the submitted information under section 552.103 or section 552.111 of the Government Code. Nevertheless, information subject to section 552.022 may be withheld under section 552.104 of the Government Code. *See* Gov't Code § 552.104. Additionally, section 552.143 makes information confidential under the Act. We also note the Texas Supreme Court has determined the Texas Rules of Civil Procedure are "other law" for purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will consider your arguments under sections 552.104 and 552.143 and under rule 192.3 of the Texas Rules of Civil Procedure.

Section 552.104 of the Government Code excepts from required public 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 connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held 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 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 made a substantial financial investment in Museum Tower, L.P., (the "Museum Tower") which itself owns and sells condominiums. Upon review, we agree the system has demonstrated a specific marketplace interest and may be a competitor in the marketplace of condominium sales for purposes of section 552.104 of the Government Code.

You state the release of the information at issue could harm the system's competitive advantage in this marketplace. However, upon review, we find the submitted contract is an agreement between the system and a consultant to assist in resolving disputes concerning the construction of the Museum Tower development. As such, we find the system has failed to adequately explain how the release of this contract would harm its competitive advantage in the marketplace with respect to the sale of condominiums in the Museum Tower development. Accordingly, the system may not withhold the submitted information under section 552.104 of the Government Code.

Section 552.143(c) of the Government Code, provides:

All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)–(9), (11), or (13)–(16) is confidential and excepted from the requirements of Section 552.021. This subsection does not apply to a governmental body's purchase, holding, or disposal of restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. This subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

Gov't Code § 552.143(c). You argue the submitted contract is excepted from disclosure under section 552.143 because the system has invested in the Museum Tower development, a restricted security. However, as previously stated, the contract at issue relates to the retention of a consulting expert for the purpose of resolving disputes concerning the construction of the Museum Tower development and does not relate to the system's purchase, holding, or disposal of a restricted security. Accordingly, we conclude the system may not withhold the submitted information under section 552.143 of the Government Code.

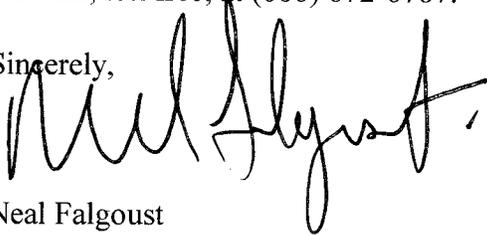
Texas Rule of Civil Procedure 192.3(e) provides “[t]he identity, mental impressions, and opinions of a consulting expert whose mental impressions and opinions have not been reviewed by a testifying expert are not discoverable.” TEX. R. CIV. P. 192.3(e). A “consulting expert” is defined as “an expert who has been consulted, retained, or specially employed by a party in anticipation of litigation or in preparation for trial, but who is not a testifying expert.” *Id.* 192.7. You explain the system hired the consulting expert in anticipation of and preparation for litigation involving Museum Tower. Furthermore, you state this expert has been retained solely for consultation and will not testify at trial. Based on your representations, we conclude the system may withhold the identity of the consulting expert, a representative sample of which we have marked, under Texas Rule of Civil Procedure 192.3(e). However, the remaining information does not reveal the identity, mental impressions, or opinions of the consulting expert. Accordingly, the system may not withhold the remaining information on the basis of Texas Rule of Civil Procedure 192.3(e). As you make no other arguments against disclosure, the system must release the remaining 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.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,

A handwritten signature in black ink, appearing to read 'Neal Falgoust', written over the word 'Sincerely,'.

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/bhf

Ref: ID# 527226

Enc. Submitted documents

c: Requestor  
(w/o enclosures)