



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2016

Ms. Erin Perales
General Counsel
Houston Municipal Employees Pension System
1201 Louisiana, Suite 900
Houston, Texas 77002

OR2016-26560

Dear Ms. Perales:

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# 636144.

The Houston Municipal Employees Pension System ("HMEPS") received a request for specified contracts for consulting services. HMEPS claims the requested information is excepted from disclosure under section 552.104 of the Government Code. HMEPS also states, and provides documentation showing, it notified Cliffwater, L.L.C. ("Cliffwater"), Gabriel Roeder Smith & Company ("GRS"), and Wilshire Associates of HMEPS's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 Cliffwater and GRS objecting to the release of some of the information at issue under sections 552.104 and 552.110 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

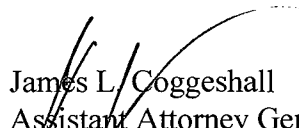
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). HMEPS informs us it administers, manages, and operates a pension system, and its duties include directing investments and

overseeing the fund's assets. To assist in its duty to monitor its investments, HMEPS explains it engages investment and actuarial consultants on a recurring basis. HMEPS argues release of the submitted information would give an advantage to bidders seeking to contract with HMEPS for investment and actuarial consulting services, and harm its ability to negotiate and compete for better rates for those services. Upon review, we find HMEPS has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude HMEPS may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 636144

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we do not address the other arguments to withhold this information.