



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2017

Ms. Rachel Feibus
Staff Attorney
Houston Municipal Employees Pension System
1201 Louisiana, Suite 900
Houston, Texas 77002

OR2017-14524

Dear Ms. Feibus:

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# 666611.

The Houston Municipal Employees Pension System ("HMEPS") received a request for specified information pertaining to various board meeting agenda items. HMEPS states it has released some of the submitted information pursuant to section 552.0225(b) of the Government Code. *See* Gov't Code § 552.0225(b). HMEPS claims the remaining information is excepted from disclosure under sections 552.104, 552.111, and 552.143 of the Government Code. HMEPS also states, and provides documentation showing, it notified the following third parties 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: BlackRock; Cliffwater L.L.C. ("Cliffwater"); Fortress; Intech; Summit Partners, L.P. ("Summit"); Valor Equity Partners ("Valor"); and Wilshire Associates. *See id.* § 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). In correspondence to this office, Cliffwater, Summit, and Valor object to the release of some of the information at issue. We have considered the submitted arguments and reviewed the submitted information.

Section 552.143 of the Government Code reads, in relevant part, as follows:

(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). HMEPS states the information it has marked under subsection 552.143(a) consists of information prepared by and received from private investment funds. *See id.* § 552.143(a). It also states the information it has marked under subsection 552.143(b) consists of due diligence information prepared by a HMEPS consultant or private investment funds. Thus, HMEPS must withhold the information it has marked under subsections 552.143(a) and (b) of the Government Code.¹

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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 states it is a significant investor in the public investment marketplace and competes with other investors, including public and private pension funds, for the best fees, rates, and terms from its investment managers. HMEPS explains the remaining information it has marked under section 552.104 pertains to a proposed amendment of an agreement with BlackRock for investment management services. HMEPS asserts release of this information “would give access to HMEPS’s confidential pricing information and strategies and thereby compromise HMEPS’s ability to negotiate agreements with prospective managers.” After review of the information at issue and consideration of the arguments, 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 remaining information it has marked under section 552.104(a) of the Government Code.²

To conclude, HMEPS must withhold the information it has marked under subsections 552.143(a) and (b) of the Government Code. HMEPS may withhold the remaining information it has marked under section 552.104(a) of the Government Code.


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

²As our ruling is dispositive, we do not address the other arguments to withhold 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.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# 666611

Enc. Submitted documents

c: Requestor
(w/o enclosures)