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ATTORNEY GENERAL OF TEXAS

August 3, 2017

Ms. Paige H. Saenz
Counsel for City of Austin Employees Retirement System
The Knight Law Firm LLP
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2017-17498

Dear Ms. Saenz:

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# 669378.

The City of Austin Employees Retirement System (the "system"), which you represent, received a request for information pertaining to several agenda items relating to a specified investment committee meeting. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.143 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of Neuberger Berman Investment Advisers LLC ("Neuberger Berman") and JP Morgan Chase & Co. ("JP Morgan"). Accordingly, you state you notified these third parties of the request and their rights to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (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 received comments from Neuberger Berman and JP Morgan. We have considered the submitted arguments and reviewed the submitted information.

You argue the some of submitted information is excepted from disclosure under section 552.143 of the Government Code, which provides, in relevant 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 for 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).

(c) 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), (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.

Gov't Code § 552.143(a)-(c). You state Exhibit A consists of post-investment due diligence reviews and analysis and correspondence with investment managers of private investment funds the system contracts with to manage retirement system funds. You state Exhibit B consists of pre-investment due diligence information. You inform us the information contained in Exhibit A and Exhibit B is not subject to section 552.0225(b) and has not been released. *See id.* § 552.0225(b). Based on your representations and our review, we agree the system must withhold Exhibits A and B under section 552.143 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." 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 (Tex. 2015). You represent the information in Exhibit C pertains to a competitive bidding situation. In addition, you state release of the information in Exhibit C would "provide insight as to [the system's] current position on proposals, and proposers could adjust the responses and presentations accordingly." After review of the information at issue and consideration of the arguments, we find the system has established the release of Exhibit C would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the Exhibit C under section 552.104(a).²

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

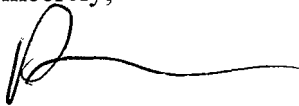
²As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

In summary, the system must withhold Exhibits A and B under section 552.143 of the Government Code. The system may withhold Exhibit C under section 552.104 of the Government Code.

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,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 669378

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)