



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 17, 2017

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

OR2017-26337

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# 684713.

The Houston Municipal Employees Pension System (the "system") received two requests from different requestors for documents pertaining to a specified system board meeting. The system states it has released some information to the requestors. The system claims some of the submitted information is excepted from disclosure under sections 552.104, 552.111, and 552.143 of the Government Code. Additionally, the system states release of the submitted information may implicate the proprietary interests of Wilshire Associates Incorporated ("Wilshire"). Accordingly, the system states, and provides documentation showing, it notified Wilshire of the requests for information and of its right to submit arguments to this office as to why the submitted information should not be released. *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 have consisted the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from

Wilshire explaining why the submitted information should not be released. Accordingly, we have no basis to conclude Wilshire has a protected proprietary interest in the submitted information, and the system may not withhold any portion of it on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

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). The system states it has specific marketplace interests in the information it marked because the system “is responsible for investing billions of dollars in trust assets . . . in the public investment marketplace through investment managers[.]” Additionally, the system informs us it “competes with other investors . . . for the best investments with the highest returns.” The system argues release of the information at issue would harm the system’s negotiating position in future negotiations with investment managers. Further, the system argues release of the information at issue would harm its competitive advantage by rendering its investment strategies less effective. After review of the information at issue and consideration of the arguments, we find the system has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information it marked under section 552.104(a) of the Government Code.<sup>1</sup>

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the system may withhold the information it marked under section 552.104(a) of the Government Code. The system must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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<sup>1</sup>As our ruling is dispositive, we need not address the system’s remaining arguments against disclosure of 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](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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/tdw

Ref: ID# 684713

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Third Party  
(w/o enclosures)