



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2017

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

OR2017-29190

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# 689381.

The Houston Municipal Employees Pension System (the "system") received a request for documents relating to specified agenda items at a specified system board meeting. The system states it has released some information to the requestor. 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") and Cliffwater LLC ("Cliffwater"). Accordingly, the system states, and provides documentation showing, it notified these third parties of the request for information and of their 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 received comments from Wilshire and Cliffwater. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information may be subject to section 552.0225 of the Government Code. Section 552.0225(b) provides as follows:

The following categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under [the Act]:

- (1) the name of any fund or investment entity the governmental body is or has invested in;
- (2) the date that a fund or investment entity described by Subdivision (1) was established;
- (3) each date the governmental body invested in a fund or investment entity described by Subdivision (1);
- (4) the amount of money, expressed in dollars, the governmental body has committed to a fund or investment entity;
- (5) the amount of money, expressed in dollars, the governmental body is investing or has invested in any fund or investment entity;
- (6) the total amount of money, expressed in dollars, the governmental body received from any fund or investment entity in connection with an investment;
- (7) the internal rate of return or other standard used by a governmental body in connection with each fund or investment entity it is or has invested in and the date on which the return or other standard was calculated;
- (8) the remaining value of any fund or investment entity the governmental body is or has invested in;
- (9) the total amount of fees, including expenses, charges, and other compensation, assessed against the governmental body by, or paid by the governmental body to, any fund or investment entity or principal of any fund or investment entity in which the governmental body is or has invested;
- (10) the names of the principals responsible for managing any fund or investment entity in which the governmental body is or has invested;

- (11) each recusal filed by a member of the governing board in connection with a deliberation or action of the governmental body relating to an investment;
- (12) a description of all of the types of businesses a governmental body is or has invested in through a fund or investment entity;
- (13) the minutes and audio or video recordings of each open portion of a meeting of the governmental body at which an item described by this subsection was discussed;
- (14) the governmental body's percentage ownership interest in a fund or investment entity the governmental body is or has invested in;
- (15) any annual ethics disclosure report submitted to the governmental body by a fund or investment entity the governmental body is or has invested in; and
- (16) the cash-on-cash return realized by the governmental body for a fund or investment entity the governmental body is or has invested in.

Gov't Code § 552.0225(b). The system, Cliffwater, and Wilshire argue some of the submitted information is excepted from disclosure under sections 552.104, 552.110, 552.111, and 552.143 of the Government Code. However, the exceptions to disclosure found in the Act, do not apply to information that is made public by section 552.0225. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the system must release the types of information enumerated in section 552.0225(b) of the Government Code.

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, with the exception of the information subject to section

552.0225(b), which must be released, the system may withhold the information it marked under section 552.104(a) of the Government Code.¹

Section 552.143 of the Government Code provides in 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 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). Cliffwater states some of the remaining information consists of post-investment due diligence information provided to the system. Based on this representation and our review, we find, with the exception of the information subject to section 552.0225(b), which must be released, the system must withhold the information we have marked under section 552.143(b) of the Government Code.²

In summary, with the exception of the information subject to section 552.0225(b), which must be released, the system may withhold the information it marked under section 552.104(a) of the Government Code and must withhold the information we have marked under section 552.143(b) of the Government Code. 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.

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

²As our ruling is dispositive, we need not address Cliffwater's remaining arguments against disclosure of this information.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 689381

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Parties
(w/o enclosures)