



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 16, 2019

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

OR2019-10213

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# 759643.

The Houston Municipal Employees Pension System (the "system") received a request for information pertaining to two specified board meeting agenda items. You state the system has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104, 552.111, and 552.143 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the following third parties: Baillie Gifford Overseas Limited ("Baillie Gifford"); GlobeFlex Capital, L.P. ("GlobeFlex"); T. Rowe Price Associates, Inc. ("T. Rowe Price"); and Wilshire Associates Incorporated ("Wilshire"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 GlobeFlex and T. Rowe Price. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the information submitted as Exhibit 3 is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Exhibit 3 consists of completed reports that are subject to section 552.022(a)(1). The system must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(1) under section 552.111 of the Government Code. However, this exception is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver).* Therefore, the system may not withhold Exhibit 3 under section 552.111 of the Government Code. However, information encompassed by section 552.022 may be withheld under section 552.104. *See Gov't Code § 552.104(b)* (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)). Further, sections 552.110 and 552.143 of the Government Code make information confidential under the Act. Accordingly, we will consider the arguments under sections 552.104, 552.110, and 552.143 of the Government Code against disclosure of the information subject to section 552.022.

Section 552.143 of the Government Code provides, in relevant part,

(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 [required public disclosure].

(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 [required public disclosure], except to the extent it is subject to disclosure under Subsection (c).

*Id.* § 552.143(a)-(b). You state the information submitted as Exhibit 3 consists of pre-investment due diligence information prepared by the system and Wilshire, an investment consultant hired by the system. You also state the information submitted as Exhibit 4 consists of information prepared and provided to the system by Baillie Gifford, GlobeFlex, and T. Rowe Price, which we understand are private investment funds for purposes of section 552.143(d)(1) of the Government Code. *See id.* § 552.143(d)(1) (defining "private

investment fund”). You further state the information at issue has not been publicly released. We find the information at issue is not subject to section 552.0225 or section 552.143(c) of the Government Code. Based on these representations and our review, we find the system must withhold the submitted information under section 552.143 of the Government Code.<sup>1</sup>

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,



Blake Brennan  
Attorney  
Open Records Division

BB/gw

Ref: ID# 759643

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 4 Third Parties  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.