



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 8, 2020

Ms. Rachel Feibus  
Assistant General Counsel  
Houston Municipal Employee Pension System  
1201 Louisiana, Suite 900  
Houston, Texas 77002

OR2020-25357

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# 847937.

The Houston Municipal Employee Pension System (the "system") received a request for information pertaining to all investment holdings during a certain time period.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state you notified multiple 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.<sup>2</sup> *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

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<sup>1</sup> The system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

<sup>2</sup> The third parties you notified consist of: AllianceBernstein Institutional Investments; Ariel Investments; Ballie Gifford; Baring Asset Management; BlackRock; Cohen & Steers Capital Management, Inc.; DDJ Capital Management, L.L.C. ("DDJ"); DePrince, Race & Zollo, Inc. ("DRZ"); EARNEST Partners; Globeflex Capital; GMO, LLC; Loomis Sayles & Company, L.P. ("Loomis"); Neumeier; Oakbrook Investments; OFI Institutional Asset Management; PanAgora Asset Management; Profit Investment Management; Pugh Capital; Salient Partners, L.P.; State Street Global Advisors; T. Rowe Price; Thomas White International Ltd.; and Tortoise Capital Advisors, L.L.C. ("Tortoise").

Act in certain circumstances). We have received comments from DDJ; DRZ; Loomis; and Tortoise. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note some of the requested information may have been the subject of previous request for a ruling, as a result of which this office issued Open Records Letter No. 2015-10981 (2015). In that ruling, we determined in pertinent part, with the exception of the information subject to section 552.0225 of the Government Code, which must be released, the system may withhold the information at issue under section 552.104 of the Government Code. We note, since the previous ruling was issued, the law regarding section 552.104 has changed. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Therefore, the system may not rely on Open Records Letter No. 2015-10981 as a previous determination with respect to the information previously withheld under section 552.104. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Nevertheless, as we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based with respect to the information released under section 552.0225(b), the system must rely on Open Records Letter No. 2015-10981 as previous determination with respect to that information and release the identical information in accordance with that ruling. *See id.*

Next, we note section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(b)-(c). Although the system argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the system's argument under section 552.110.

We note some of the remaining information is investment information that is 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;

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<sup>3</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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 and Loomis argue section 552.104 of the Government Code and the third parties raise section 552.110 of the Government Code for some of the remaining information. However, the exceptions to disclosure found in the Act, including sections 552.104 and 552.110, 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). Accordingly, the types of information enumerated in section 552.0225(b) of the Government Code may not be withheld under section 552.104 or section 552.110 of the Government Code and must be released to the requestor. However, we will consider the submitted arguments with respect to the remaining information not subject to section 552.0225(b) of the Government Code.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." 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, 841 (Tex. 2015). You inform us the system is "a significant investor in the marketplace, managing over \$3.1 billion of trust assets," and "through its investment managers, [the system] competes with other investors, including private pension funds, for the best rates, commissions, and trading terms." You assert release of the remaining information would "hinder [the system]'s ability to compete in the public investment marketplaces" and "negatively impact[] the ability of the investment manager to negotiate favorable trades and to get the best price for its investments." Based upon your representations and our review, we find you have demonstrated they system has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. We also find you have demonstrated release of the remaining information would give advantage to a competitor or bidder. Accordingly, the system may withhold the remaining information under section 552.104(a) of the Government Code.<sup>4</sup>

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

In summary, with respect to the information released under section 552.0225(b), the system must rely on Open Records Letter No. 2015-10981 as a previous determination with respect to that information and release the identical information in accordance with that ruling. With the exception of the types of information enumerated in section 552.0225(b) of the Government Code, which must be released, the system may withhold the remaining information 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/jm

Ref: ID# 847937

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

23 Third Parties  
(w/o enclosures)