



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 12, 2022

Mr. Robert Ash  
Executive Director  
City of El Paso Employees Retirement Trust  
1039 Chelsea Street  
El Paso, Texas 79903

OR2022-38423

Dear Mr. Ash:

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# 989363.

The City of El Paso Employees Retirement Trust (the "trust") received two requests from different requestors for information pertaining to two specified meetings. Although the trust takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, the trust notified Mellon Investments Corporation ("Mellon"); Newton Investment Management North America, LLC ("Newton"); and UBS Realty Investors, LLC ("UBS") 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 Mellon and Newton. We have considered 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 UBS explaining why the submitted information should not be released. Accordingly, we have no basis to conclude UBS has a protected proprietary interest in the submitted information, and the trust may not withhold any portion of it on that basis. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception).

Mellon and Newton raise section 552.110 of the Government Code for some of their information at issue. Section 552.110(b) states, "information is [excepted from required

disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See* Gov’t Code § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). Section 552.110(c) of the Government Code exempts from disclosure “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(c). Upon review, we find Mellon and Newton failed to provide specific factual evidence demonstrating any portion of the submitted information is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the trust may not withhold any portion of the information at issue under section 552.110 of the Government Code. The trust must release the submitted 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 <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,

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMH/pt

Ref: ID# 989363

Enc. Submitted documents

c: Requestor  
(w/o enclosures)