



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 17, 1992

Ms. Karen Johnson  
Executive Director  
State Bar of Texas  
P. O. Box 12487  
Austin, Texas 78711

Open Records Decision No. 604

Re: List of registrants for Professional Development Programs (RQ-192)

Dear Ms. Johnson:

You have requested our decision as to whether a list of registrants for certain programs of the State Bar is subject to required public disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

The Professional Development Program (PDP) of the State Bar of Texas has received a request for "a list of registrants for PDP programs on the subject of Family Law during the previous 12 months." You contend that the requested information is excepted from required public disclosure by section 3(a)(4) of the Open Records Act because "the State Bar of Texas is in direct competition with private enterprise in the area of providing continuing legal education and its interest in the marketplace will be harmed if this information is released."<sup>1</sup> Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Generally, section 3(a)(4) protects a governmental body's interests as they relate to a competition in which third parties are bidding to contract with the government. Open Records Decision No. 592 (1991). In such a situation, the governmental body may wish to withhold information so that it can obtain more favorable offers.

In Open Records Decision No. 593 (1991), however, this office for the first time held that a governmental body might be deemed, under certain circumstances, to be a "competitor" in the marketplace. That decision found that the Teacher Retirement System, as a governmental entity authorized by both constitutional and statutory law to invest its securities, could be considered, with regard to those investments, to be a "competitor" for purposes of section 3(a)(4). Article XVI,

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<sup>1</sup>Section 81.033 of the Government Code provides that, with certain limited exceptions not relevant here, all records of the State Bar of Texas are subject to the Open Records Act.

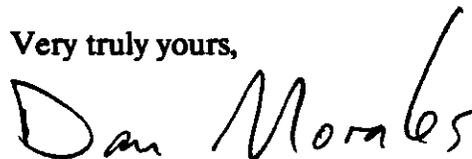
section 67 of the Texas Constitution authorizes the board of trustees of the Teacher Retirement System to "invest the funds of the system in such securities as the board may consider prudent investments." Tex. Const. art. XVI, § 67(a)(3). The constitution declares that the system shall invest its funds "in regard to the permanent disposition of [its] funds, considering the probable income therefrom as well as the probable safety of [its] capital." *Id.* The implicit charge to the Teacher Retirement System is to generate profit through sound investment. Accordingly, the decision found that certain information which could harm the system's competitive situation could be withheld from public disclosure.

The rationale of Open Records Decision No. 593 is not applicable to your claim under section 3(a)(4). A governmental body may be afforded the right to claim the "competitive advantage" aspect of section 3(a)(4) only where competition is authorized by law. Although section 81.016, of the Government Code authorizes the State Bar to hold property, it does not expressly empower the Bar to engage in competition for reasons of gaining financial profit. Unlike the Teacher Retirement System, the Bar is not specifically directed to invest its funds. On the contrary, the "purposes" guiding the State Bar demonstrate an entirely different intent. Among those purposes are the following: "to advance the quality of legal services to the public"; "to foster and maintain on the part of those engaged in the practice of law high ideals and integrity, learning, competence in public service, and high standards of conduct"; and "to provide forums for the discussion of subjects pertaining to the practice of law . . . ." Gov't Code § 81.012(2), (3), (6). Such purposes are hardly compatible with an ethic of marketplace competition. Accordingly, it is our decision that you may not withhold the requested information under section 3(a)(4) of the Open Records Act.

### S U M M A R Y

A list of registrants for legal education programs of the State Bar of Texas may not be withheld from disclosure under section 3(a)(4) of the Open Records Act, V.T.C.S. article 6252-17a.

Very truly yours,



DAN MORALES  
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**Chair, Opinion Committee**

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