ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2005

Ms. Therese Sternenberg
TG Officer for Public Information
Texas Guaranteed Student Loan Corporation
P. O. Box 83100
Round Rock, Texas 78683-3100

OR2005-08983

Dear Ms. Sternenberg:

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# 233663.

The Texas Guaranteed Student Loan Corporation ("TG") received a request for its current record destruction agreement. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder or competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990).

Normally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978). The submitted documents reveal that the contract has already been awarded with respect to the requested information. Nevertheless, you argue that the requested information may be withheld under section 552.104 as TG "currently has an open invitation for bids for record destruction services[.]" You assert that "[i]f bidders . . . are given access to information relating to TG's current contract and costs for record destruction services, it will adversely impact our ability to realize any cost-savings resulting from the

competitive bidding process." Based on your representations and our review of the information at issue, we find that you have adequately demonstrated that the release of this particular information would harm the interests of TG. *See* Open Records Decision No. 592 (1991). Accordingly, we conclude that TG may withhold the submitted information pursuant to section 552.104 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

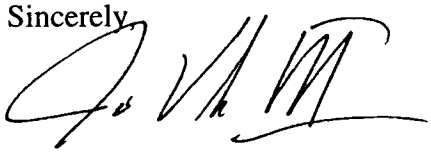
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 233663

Enc. Submitted documents

c: John Vanderwege
Texas Operations Manager
Shred First
Via Fax: (214) 330-5801
(w/o enclosures)