ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2006

Ms. Lona Chastain
Assistant General Counsel
Open Records Coordinator
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2006-04537

Dear Ms. Chastain:

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# 248292.

The Texas Workforce Commission (the "commission") received a request for the proposal of a specified Self Sufficiency Grant and its award to the Alamo Community College District (the "district"). You do not take a position as to whether the requested information is excepted under the Act; however, you state, and provide documentation showing, that you notified the district of the commission's receipt of the request for information and of the district's right to submit arguments to this office as to why the requested information should not be released to the requestor. *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). The district, in its response to the notice, asserts that some of the information at issue is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The district asserts that pages 10-12 and 15 are excepted from release under section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory

predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. First, the governmental body must demonstrate that it has specific marketplace interests. *Id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *Id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *Id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

The district informs us that it "is a competitor for the resources of the Self Sufficiency Fund" and that the competition is authorized by section 835.14 of title 40 of the Texas Administrative Code, which provides the following:

> After obtaining the review and comments of the Board in the applicable local workforce development area(s), a prospective private partner, together with a public community or technical college, community-based organization, state extension service, or TEEX and any other training provider, shall present to the Director, or his or her designee, a joint proposal requesting funding for a project which meets the objectives of the Self-Sufficiency Fund.

40 T.A.C. § 835.14(a). The district also indicates that it competes for each Self Sufficiency Fund when it is offered by the commission, and that release of the information at issue would allow competitors to undermine the district's ability to compete in this marketplace. Based on these arguments and representations and our review of the submitted information, we find the district has demonstrated that it has specific marketplace interests that would be harmed if pages 10-12 and 15 were released to the public; therefore, the commission may withhold this information, which we have marked, pursuant to section 552.104 of the Government Code.[1] As the commission and the district do not object to release of the remaining information, the remaining information must be released to the requestor.

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

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[1]As we are able to resolve this under section 552.104, we do not address the district's other argument for exception of this information.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 248292

Enc. Submitted documents

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