



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 7, 2008

Mr. W. Montgomery Meitler  
Assistant Counsel, Office of Legal Services  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2008-03101

Dear Mr. Meitler:

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# 304107.

The Texas Education Agency (the "agency") received a request for the draft RFQ for science Texas Essential Knowledge and Skills ("TEKS") that was discussed at the November 14-16, 2007 State Board of Education (the "SBOE") meeting, and any other RFQ for a facilitator for any subject TEKS. You state that, with the exception of the requested draft RFQ, you have provided the requestor with the requested information. You claim that the submitted draft RFQ 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 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. Section 552.104 is generally invoked to except information relating to competitive bidding situations involving specific commercial or contractual matters. Open Records Decision No. 463 (1987). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See id.* Section 552.104 generally does not except bid information from disclosure once the bidding is over and the contract is executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the purpose of the submitted draft RFQ is to solicit "proposals to assist . . . in facilitating a process by which the [TEKS] for [s]cience are reviewed and revised." You also state that the SBOE, working in conjunction with the agency, has decided to postpone the release of the RFQ for a few months, and therefore a contract has not been awarded. You assert that the release of the draft RFQ would "impair the competitive aspect of the procurement process and grant potential contractors a significant and unfair advantage over their competition." Based on your representations, we conclude that the agency may withhold the submitted information under 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/jh

Ref: ID# 304107

Enc. Submitted documents

c: Ms. Jo-Hannah Whitsett  
Political Director  
Texas Freedom Network  
c/o W. Montgomery Meitler  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494  
(w/o enclosures)