



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2008

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

OR2008-14242

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# 324951.

The Texas Education Agency (the "agency") received a request for information pertaining to applications submitted to the agency for the Generation 14 open enrollment charter application cycle. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.<sup>1</sup>

Initially, you state that the evaluations responsive to a portion of the request were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-13603 (2008). In that ruling we concluded that the agency may withhold the responsive evaluations under section 552.104 of the Government Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the agency must continue to rely on that ruling as a previous determination and withhold the information in accordance with Open Records Letter No. 2008-13603. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the agency to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

information is or is not excepted from disclosure). However, with respect to the remaining information that was not previously requested and ruled upon by this office, we will address your arguments.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in certain competitive situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us that the submitted information relates to competition for open-enrollment charters. You state that the agency has received thirty-nine charter applications, and may only award five additional charters. You explain that winning an open-enrollment charter makes both state and federal funds available to the charter holder, including federal start-up funds, state aid, and federal grant funds. You state that the agency is in the evaluation and interview phase of the application process and that the available charters have yet to be awarded. You argue that release of the requested applications before the charters are awarded would adversely affect the competition for the charters, provide applicants with an unfair advantage over their competitors, and hinder the agency's ability to select the best possible applicants. Based on your representations, we conclude that the agency may withhold the submitted information at this time under section 552.104 of the Government Code. We note that the agency may no longer withhold the information on this basis once the charters have been awarded.

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). If the governmental body does not file suit over 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

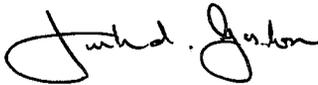
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/eeg

Ref: ID# 324951

Enc. Submitted documents

c: Ms. Maria Garza Brown  
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(w/o enclosures)