



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 17, 2010

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

QR2010-03757

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# 374897 (TEA PIR Nos. 12478, 12479, 12480, 12630, and 12665).

The Texas Education Agency (the "agency") received five requests from five different requestors for the grant application and any related documents pertaining to the Race to the Top Fund. You claim the requested grant application information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. 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)

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(construing statutory predecessor). This office has held 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. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See 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. *See 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. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

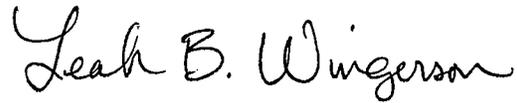
You inform us the American Recovery and Reinvestment Act of 2009 provides money for the federal Race to the Top Fund, a competitive grant program designed to encourage and reward states for education innovation and reform. You explain states are the entities eligible to compete in this grant competition and must individually submit applications, which must include certain funding criteria proposed by the United States Department of Education. You further explain applications for the grant competition may be submitted during two phases. You state that although Texas did not submit an application during Phase 1 of the program, the agency is preparing the state's application to be submitted during Phase 2. Based on these representations, we find you have established the agency has legitimate marketplace interests in the grant program for purposes of section 552.104. Furthermore, you state the requested information consists of draft documents concerning the agency's development of Texas's application for Race to the Top funds. You argue "[p]ublic disclosure of this information at this time would impair the competitive aspect of Phase 2 of the application process and grant potential competitors a significant and unfair advantage over [the agency]." You also contend the agency's "ability to produce the most competitive application would be hindered." Based on these representations and our review, we find you have demonstrated release of the information at issue would cause specific harm to the agency's marketplace interests. Accordingly, the agency may withhold the requested grant application information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 374897

Enc. Submitted documents

c: Requestors  
(w/o enclosures)