



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2010

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

OR2010-06313

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# 379121 (TEA PIR# 12736).

The Texas Education Agency ("TEA") received a request for information relating to a specified charter school application. You state that to the extent it exists, some of the requested information will be released. 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 reviewed the information you submitted.

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(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).

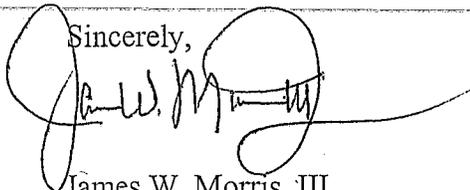
You contend that the submitted information is related to competition for open-enrollment charters. You explain that winning an open-enrollment charter makes both state and federal funds available to a charter holder, including federal start-up funds, state aid, and federal

grant funds. You inform us that under section 12.101(b) of the Education Code, the State Board of Education is authorized to grant up to 215 open-enrollment charters, of which only three charters are currently available to be awarded in the next application cycle, Generation 15. You state that TEA has received eleven charter applications for the next cycle. You also inform us that the submitted application is for one available charter in the Generation 14 application cycle, which you state is currently in the evaluation phase. You explain that if the applicant is not successful, the available charter will be added to the three available charters in the Generation 15 application cycle, and the applicant will have the opportunity to resubmit its application. You argue that until the charters are awarded, release of the submitted information would impair the competitive aspect of the application process, grant potential applicants a significant and unfair advantage over their competition, and hinder TEA's ability to receive the best possible charter applicants. Based on your representations, we conclude that TEA may withhold the submitted information at this time under section 552.104 of the Government Code. We note that TEA may no longer withhold the information on this basis once the available charters have been awarded.

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, 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/eb

Ref: ID# 379121

Enc: Submitted documents

c: Requestor
(w/o enclosures)