



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2010

Ms. Karla Schultz
Walsh, Anderson, Brown, Aldridge & Gallegos, PC
P.O. Box 2156
Austin, Texas 78768

OR2010-07346

Dear Ms. Schultz:

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# 380089.

The Navasota Independent School District (the "district"), which you represent, received two requests for the district's application for the 2009 Improving Literacy Through School Libraries grant. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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). 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 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 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 state the information at issue relates to the United States Department of Education's 2010 Improving Literacy Through Libraries Program. You assert this program offers funding to public schools through a "competitive grant process" in which eligible [school] districts . . . compete for a limited pool of federal monies." You state the submitted information consists of the district's successful 2009 grant application. You explain the recipients of the 2010 grant have not been selected, and the district intends to use much of the same information in its 2010 grant application. You assert the release of the submitted information would harm the district's competitive advantage and financial interests in the 2010 grant competition by allowing competing school districts to use the district's successful 2009 grant application in the preparation of their applications. Based on your representations and our review of the submitted information, we find the district has demonstrated it has legitimate marketplace interests in the grant program for purposes of section 552.104. Further, we find you have demonstrated release of the submitted information would cause specific harm to the district's marketplace interests. We therefore conclude the district may withhold the submitted information under section 552.104.¹

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

Ref: ID# 380089

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)