



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2010

Mr. William L. Fly
University Attorney
Texas State University
601 University Drive
San Marcos, Texas 78666-4615

OR2010-09664

Dear Mr. Fly:

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# 384879.

Texas State University-San Marcos (the "university") received a request for textbook data from the university's campus bookstore for a specified time period. 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 submitted representative samples of information.¹

Section 552.104 of the Government Code excepts from required public 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

¹We assume the "representative samples" of records submitted to this office are 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 that those records contain substantially different types of information than that submitted to this office.

No. 593 (1991) (construing statutory predecessor). This office has held that 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).

In this case, you inform us the university's bookstore is "a self-supporting entity that receives no public funds for its support." *See* Gov't Code § 2252.061(1) (defining auxiliary enterprise as "a business activity that is conducted at a state agency, provides a service to the agency, and is not paid for with appropriated money"). You state the university's bookstore competes with other bookstores in providing text books for students. Having considered your representations and arguments, we find you have demonstrated the university bookstore has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. *See* ORD 593.

We next address whether release of the submitted information would harm the university bookstore's marketplace interests. You state a competitor could "gain an unfair competitive advantage by using the work product produced by the [b]ookstore to determine which books sold best, then stock and sell those books, resulting in diminished sales in the [b]ookstore." You further contend that a competitor could use the requested information "to determine the [b]ookstore's profit margin per item and use that information to undercut the prices charged by the [b]ookstore, resulting in diminished sales." Having considered your arguments, we conclude you have shown that release of the submitted information will bring about specific harm to the university bookstore's marketplace interests. *See id.* Therefore, the university may withhold the submitted information pursuant to section 552.104 of the Government Code.

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,

A handwritten signature in black ink, appearing to read "C. Alvarado". The signature is written in a cursive style with a large initial "C".

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 384879

Enc. Submitted documents

c: Requestor
(w/o enclosures)