



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2010

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

OR2010-11636

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# 389038 (TEA PIR# 13223).

The Texas Education Agency ("TEA") received a request for the grant application submitted to the United States Department of Education ("USDOE") for federal start-up funds. You claim 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 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).

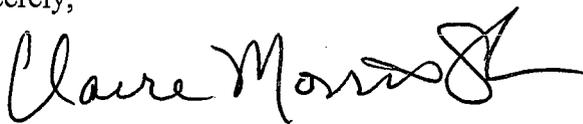
You state the USDOE's Charter School Program ("CSP") awards competitive grants to state educational agencies ("SEAs") to enable SEAs to conduct charter school programs. You explain this program offers funding to SEAs through a competitive grant process in which

eligible SEAs compete for a limited number of grant awards. Based on your representations, we find you have established TEA has a legitimate marketplace interest in the grant process for purposes of section 552.104. You state the submitted information consists of TEA's competitive application for CSP funds. You state the CSP funds had not been awarded at the time TEA received the instant request for information. You assert release of the submitted information would impair the competitive aspect of the application process and grant potential competitors or interested parties the opportunity to exert undue influence on the reviewers or the USDOE in the evaluation and award process, to the detriment of TEA. Based on your representations and our review of the submitted information, we find TEA has demonstrated release of the submitted information would cause specific harm to TEA's marketplace interests. We therefore conclude TEA may withhold the submitted information under section 552.104.

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

Ref: ID# 389038

Enc. Submitted documents

c: Requestor
(w/o enclosures)