



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2010

Mr. David Timberger
Director, General Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711

OR2010-14949

Dear Mr. Timberger:

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# 395430 (TCEQ PIR no. 10.07.15.11).

The Texas Commission on Environmental Quality (the "commission") received a request for four specified pages from each Texas Emissions Reduction Plan ("TERP") grant application submitted to the commission in fiscal year 2010 involving over-the-road heavy duty class 8a and 8b trucks. 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 representative sample of information.¹

Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect a governmental body's interests in certain competitive situations. *See* Open Records Decision No. 609 at 2 (1992); 592 at 8 (1991). You argue the submitted grant application relates to a competitive situation because private entities are applying for a limited number of TERP grants. You represent that, on the date the

¹We 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 that those records contain substantially different types of information than that submitted to this office.

commission received the request for information, the application period for private parties to submit grant applications to the commission was still open. You argue release of the submitted information would jeopardize the grant process by enabling the submission of inaccurate grant applications tailored to win a grant. Based on your representations, we conclude the commission may withhold the submitted information at this time under section 552.104 of the Government Code. We note that the commission may no longer withhold the information on this basis once the available TERP grants have been executed.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 395430

Enc. Submitted documents

c: Requestor
(w/o enclosures)