



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2010

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

OR2010-16118

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# 397880 (TEA PIR#'s 13684, 13704, 13708, 13709, 13767).

The Texas Education Agency (the "agency") received five requests for information pertaining to specified grant programs, including the Texas Title I Priority Schools Grant.¹ 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 sample of information.²

Initially, we note you have only submitted information pertaining to the Texas Title I Priority Schools Grant for our review. We assume, to the extent any additional responsive information existed when the agency received the request for information, you have released it. If not, then you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

¹You state the agency sought and received clarification of the first request. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

²We 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.

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. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, 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. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us the submitted information relates to "a pending competitive grant in which multiple applications have been submitted to [the agency]." You explain that program specialists within the agency's Division of NCLB Program Coordination are currently conducting initial negotiations regarding the applications, which will be followed by a review and program approval. Thus, you state the grant has not been awarded. Further, you state that release of the submitted information would "impair the competitive aspect of the application process and give potential applicants a significant and unfair advantage over their competition[.]" As a result, [the agency's] ability to receive the best possible applicant would be hindered." Based on these representations and our review, we conclude the agency may withhold the submitted information under 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 397880

Enc. Submitted documents

c: Requestor
(w/o enclosures)