



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2012

Ms. Sandra Poel
Senior Contracts Paralegal & Public Info Coordinator
Texas Guaranteed Student Loan Corporation
P.O. Box 83100
Round Rock, Texas 78683-3100

OR2012-08624

Dear Ms. Poel:

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# 455884.

The Texas Guaranteed Student Loan Corporation ("TG") received a request for (1) "the most recent Collection Services RFP and any associated addendums or Q & A documents[;]" (2) "signed contracts, excluding copies of the RFP or addendums[;]" (3) "any document showing how vendors were scored or ranked during evaluations, including the pricing (percentage rate) submitted by all vendors[;]" (4) "a list of companies that requested the RFP and that submitted a proposal[;]" and (5) "any reports over any time period related to contract performance." You indicate TG will release some of the requested information upon the requestor's response to a cost estimate. You claim that the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your assertion that some of the requested information has been released to the requestor's company through a previous request. Generally, section 552.232 of the Government Code outlines the procedures a governmental body must follow in responding to a repetitious or redundant request from the same requestor. Gov't Code § 552.232. Although you inform us that a portion of the requested information was previously provided to other individuals with the requestor's company, we note the present requestor is not the same individual who previously requested the documents at issue from TG. Accordingly,

you have failed to establish this is a repetitious or redundant request for purposes of the Act. Thus, we will address your arguments against disclosure of the submitted information.

Next, you state some of the responsive information was the subject of a previous request by TG for a ruling, in response to which this office issued Open Records Letter No. 2011-18892 (2011). In the previous ruling, we concluded TG may withhold certain information under section 552.104 of the Government Code and release the remaining information. You do not indicate there has been any change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude TG may rely on Open Records Letter No. 2011-18892 as a previous determination. *See* Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). Thus, TG must continue to withhold or release the information encompassed by Open Records Letter No. 2011-18892 pursuant to the previous ruling.¹ To the extent the previous ruling does not encompass the submitted information, we will consider your arguments against disclosure.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any third party explaining why its information should not be released. Although TG argues the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address TG's argument under section 552.110. Therefore, as we have not received any third party arguments, we have no basis to conclude any third party has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, TG may not withhold any of the information at issue on the basis of any proprietary interest a third party may have in it.

You raise section 552.104 of the Government Code for the information in Exhibit B, which excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 104(a). The purpose of section 552.104 is to protect the interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally,

¹As we are able to make this determination, we need not address your exceptions to disclosure of the submitted information encompassed by Open Records Letter No. 2011-18892.

section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You state that “TG uses the same evaluation methodology for soliciting the same services on a recurring basis.” You further state that “the contracts at issue are for 1 year, with 3 renewals” and that “at each year, the parties have the option of renewing the contract or letting it lapse,” so that “the re-solicitation on the contract could potentially be each year, but no later than 2013.” You assert that release of the information at issue “would cause injury to future procurements.” Based on our review of your arguments and the submitted information, we find in this instance that you have adequately demonstrated that release of the information at issue would cause potential harm to TG’s interests in the upcoming competitive solicitation. Accordingly, we conclude that TG may withhold the information in Exhibit B under section 552.104 of the Government Code.

With regard to the information in Exhibit C, you raise sections 552.139 and 2059.055 of the Government Code. Section 552.139 of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report;

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body’s or contractor’s electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139. You state the information in Exhibit C relates to computer network security. You explain this information reveals "the security sufficiency and the identification of the systems that are used by the vendors." Based on your representations and our review, we find you have not demonstrated how the information in Exhibit C relates to computer network security, or to the design, operation, or defense of TG's computer network as contemplated in section 552.139(a). Further, we find you have failed to explain how the information at issue consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Accordingly, TG may not withhold any of the information in Exhibit C under section 552.139 of the Government Code.

Section 2059.055 of the Government Code provides in pertinent part:

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Gov't Code § 2059.055(b). You argue the information in Exhibit C is confidential pursuant to section 2059.055 of the Government Code. We note section 2059.055 only applies to network security information. Chapter 2059 is entitled "Texas Computer Network Security System," and section 2059.001(3) of the Government Code defines "network security" as "the protection of computer systems and technology assets from unauthorized external intervention or improper use." *See id.* § 2059.001(3). Upon review, we find you have failed to explain how the information at issue consists of network security information as defined above. Thus, we find the information in Exhibit C does not constitute confidential network security information as described in section 2059.055. Accordingly, TG may not withhold any of the information in Exhibit C under section 2059.055 of the Government Code.

In summary, TG must withhold (1) any submitted information encompassed by Open Records Letter No. 2011-18892 pursuant to the previous ruling and (2) any information in Exhibit B not encompassed by the previous ruling under section 552.104 of the Government Code. TG must release the remaining information.

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 cursive script that reads "Sean Opperman".

Sean Opperman
Assistant Attorney General
Open Records Division

SO/eb

Ref: ID# 455884

Enc. Submitted documents

c: Requestor
(w/o enclosures)