



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2012

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

OR2012-15023

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# 465539 (TEA PIR# 17869).

The Texas Education Agency (the "agency") received a request for a list of the school districts or open enrollment charter schools that applied to be part of the Texas High Performance Schools Consortium (the "consortium"). 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 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. The purpose of section 552.104 is to protect the governmental body's interests in certain competitive situations. *See* Open Records Decision No. 592 (1991). 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. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You state the consortium is established to inform the governor, legislature, and commissioner of education (the "commissioner") of methods of improving student learning through the development of innovative, next-generation learning standards and assessment and accountability systems. *See* Educ. Code § 7.0561. You explain that the commissioner and

participants in the consortium may accept gifts, grants, or donations from any source, including a private or governmental entity, for purposes of the consortium. *Id.* § 7.0561(h). You state the commissioner may select no more than twenty participants for the consortium among applicant school districts and eligible open-enrollment charter schools. You explain that applicants will be selected based on the quality of the application and the extent to which the district's participation ensures diverse representation of district types, sizes, and student populations in compliance with section 7.0561(c) of the Education Code. *See* 19 T.A.C. § 102.1201(d). You state the agency received thirty-three applications and is in the process of reviewing the applications. You assert release of the submitted information before the selected consortium participants are announced would impair the competitive aspect of the application process as interested third parties may attempt to influence the outcome of the application review and selections. Therefore, you argue the agency's ability to impartially review the applications would be hindered. Based on your representations and our review, we conclude the agency may withhold the submitted information at this time under section 552.104 of the Government Code. We note the agency may no longer withhold the information at issue on this basis once the consortium participants have been selected.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 465539

Enc. Submitted documents

c: Requestor
(w/o enclosures)