



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 19, 2013

Ms. Sara Hardner Leon  
Powell & Leon, L.L.P.  
1706 West Sixth Street  
Austin, Texas 78703

OR2013-12451

Dear Ms. Leon:

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# 493632.

The Education Service Center Region 12 (the "ESC"), which you represent, received a request for the "latest funded Gaining Early Awareness & Readiness for Undergraduate Programs (GEAR UP) grant[.]"<sup>1</sup> You claim the requested 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.<sup>2</sup>

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. This exception protects a governmental body's interests in competitive bidding and certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that 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 that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential

---

<sup>1</sup>We note the ESC requested and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

<sup>2</sup>We assume that 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.

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 assert the ESC is a competitor in the marketplace for grant funding. You state the requested information contains research and the ESC's "unique approach to preparing students for college" for which the ESC applied for federal grant funding. You assert the release of the information at issue would compromise the ESC's competitive advantage in the marketplace for grant funding by allowing other applicants to use ESC's successful application in the preparation of their applications. You also assert the marketplace for these grants is highly competitive and that release of the information at issue would allow the competing parties an unfair advantage over the ESC. However, you do not indicate the ESC is currently competing for grant funding or will use the same information in future grant applications. Upon review, we find the ESC has failed to demonstrate that release of the information at issue would harm the ESC's specific marketplace interests in a particular competitive situation. Therefore, the ESC may not withhold the information at issue under section 552.104 of the Government Code. As you raise no other exception to disclosure, the ESC must release the requested 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 493632

Enc. Submitted documents

c: Requestor  
(w/o enclosures)