



September 10, 2002

Mr. David A. Anderson
General Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2002-5056

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168374.

The Texas Education Agency (the "agency") received a request "to inspect all the 8th generation charter applications." You claim that 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.¹

Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body, usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987).

In this case, you inform us that the review process regarding the Request for Application ("RFA") is ongoing. You explain that providing a prospective applicant access to proposals that have previously been filed would give that applicant an unfair advantage. You also argue that the contract will be awarded for the performance of services for compensation and the awarding of the contract is made on a competitive basis. Finally, you refer us to subchapter D of chapter 12 of the Education Code, which explains the limited availability

¹We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

of charters. *See* Educ. Code § 12.101(b). While we agree that the applicants are in competition for a limited number of charters, you have not demonstrated that the agency has a competitive interest in this process. In fact, after reviewing your arguments and the cited statute, it is clear that the agency's sole interest here is as a regulatory entity with a duty to license and regulate charter schools. Accordingly, we conclude that section 552.104 of the Government Code is inapplicable in this instance and the information may not be withheld under that exception. *See* Open Records Decision No. 541 (1990).

However, section 552.136 of the Government Code makes certain account number information confidential and provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Accordingly, the agency must withhold the account number we have marked pursuant to section 552.136 of the Government Code.

We further note that the submitted information contains an e-mail address obtained from the public that may be excepted from public disclosure. Section 552.137 of the Government Code makes certain e-mail addresses confidential and provides in relevant part:

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Accordingly, unless there has been consent to release, the agency must withhold the e-mail address we have marked pursuant to section 552.137 of the Government Code.

Finally, the submitted information contains Form 8718, User Fee for Exempt Organization Determination Letter Request. Section 6110 of title 26 of the United States Code provides in part:

(a) Except as otherwise provided in this section, the text of any written determination and any background file document relating to such written determination shall be open to public inspection at such place as the Secretary may by regulations prescribe.

....

(c) Before making any written determination or background file document open or available to public inspection under subsection (a), the Secretary shall delete:

(1) the names, addresses, and other identifying details of the person to whom the written determination pertains . . . [.]

Further, the term "background file document" includes the request for the written determination, any written material submitted in support of the request, and any communication between the Internal Revenue Service and persons outside the Internal Revenue Service in connection with such a written determination received prior to the issuance of the determination. *See* 26 U.S.C § 6110(b)(2). Therefore, we conclude that Form 8718 is a background file document that may be released only as provided under section 6110 of title 26 of the United States Code.

In summary, we conclude that: 1) you must withhold the account number we have marked pursuant to section 552.136; 2) unless there has been consent to release, you must withhold the e-mail address we have marked pursuant to section 552.137; and 3) Form 8718 may be released only as provided under section 6110 of title 26 of the United States Code. All remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 168374

Enc: Submitted documents

c: Ms. Carolyn Boyle
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(w/o enclosures)