



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2005

Ms. Therese Sterneberg
Officer for Public Information
Texas Guaranteed Student Loan Corporation
P.O. Box 83100
Round Rock, Texas 78683-3100

OR2005-08435

Dear Ms. Sterneberg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 232275.

The Texas Guaranteed Student Loan Corporation (the "corporation") received two requests for information pertaining to RFP #05041GM1. You state that you will release some of the requested information.¹ You state that some of 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.²

You assert that the pricing information contained in the winning proposals from RFP #05041GM1 for education loan collection services is excepted from disclosure under section 552.104. 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(a). The purpose of section 552.104 is to protect a governmental body's interests

¹We note that you inform us that the requestors "have agreed to redaction of information indicated by third party owners as confidential or proprietary."

²We 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.

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). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. ORD 541.

You inform us that the contracts have already been awarded. Nevertheless, you argue that the information at issue may be withheld under section 552.104 because “[a]lthough the contracts resulting from the RFP . . . have an initial term of one year . . . any of the contracts may be terminated at any time by [the corporation] for nonperformance or for any other cause.” Furthermore you state, “[t]hree of the last four times [the corporation] has bid its collection services it has been required to terminate the contract of one of the collection vendors for nonperformance” and the corporation may need to negotiate with an unsuccessful bidder if two or more of the current contracts are terminated.

After careful review of your arguments, however, we find that you have not established that the corporation has an ongoing competitive interest that would be harmed by release of the information at issue. Further, we find that because costs and circumstances would change for future contracts, the assertion that release of the requested information might give a competitor an unfair advantage in bidding on possible future contracts is entirely too speculative. Accordingly, we conclude that you have not demonstrated that public release of the information at issue would cause specific harm to the corporation’s interests in a particular competitive bidding situation. Therefore, the corporation may not withhold the information at issue from public disclosure under section 552.104 of the Government Code.

The corporation also notes that the submitted information contains information that is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the submitted information must be released to the requestor. The information that is protected by copyright may only be released in accordance with federal copyright law.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 232275

Enc. Submitted documents

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