



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2006

Ms. Karen Hattaway
Assistant Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2006-11700

Dear Ms. Hattaway:

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# 261337.

The Texas Education Agency (the "agency") received two requests for information related to the agency's Request for Offerings (the "RFO") to develop an electronic student records system. You state that the agency is withholding information that is protected under the federal Family Education Rights and Privacy Act ("FERPA"). See Open Records Decision No. 634 (1995) (educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions). You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.104, 552.107, 552.111, 552.117, and 552.137 of the Government Code. You also state, and provide documentation showing, that you notified all interested third parties of the agency's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released to the requestor.¹ See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and

¹The agency notified the following companies pursuant to section 552.305: Athens Consulting Group, Inc., Cityon Systems, Inc., Cooper Consulting Company, Deloitte Consulting, L.L.P., HBMG, Inc., NF Consulting Services, Satyam Computer Services, Ltd., Sierra Systems Group, Inc., Systems Technology Group, Trendec, and TRIAND, Inc.

explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

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. The purpose of section 552.104 is to protect a governmental body’s interests in competitive situations, typically in the context of competitive bidding. *See* Open Records Decision No. 592 (1991). A governmental body seeking to withhold information from disclosure pursuant to section 552.104 must demonstrate 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 generally does not except bidding information after the competitive bidding has concluded and a contract has been executed. *See* Open Records Decision No. 541.

In this instance, you state that the RFO at issue was cancelled before the contract was awarded. You state that the agency “will be issuing a new RFO in the Fall of 2006 that is substantially similar to the RFO [at issue].” You further assert that “release of any of the requested information would harm [the agency’s] ability to obtain the most favorable offer in the upcoming RFO.” Upon review of your arguments and the submitted information, we conclude that you have demonstrated that public release of the information at issue would cause specific harm to the agency’s interests in a particular competitive bidding situation. Thus, we conclude that the submitted information may be withheld pursuant to section 552.104 until such time as a contract has been executed. As our ruling on this issue is dispositive, we need not address the remaining arguments.

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 261337

Enc. Submitted documents

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