



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 3, 2009

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

OR2009-02738

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# 336135.

The Texas Education Agency (the "agency") received a request for the names of the external reviewers who examined two specified 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 information.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a 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).

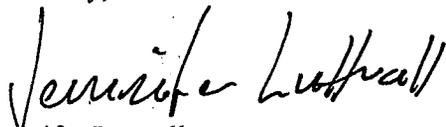
Section 552.104 generally does not except information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978). You inform us that the submitted information relates to competition for open-enrollment charters. You explain that winning an open-enrollment charter makes both state and federal funds available to the charter holder, including federal start-up funds, state aid, and federal grant funds. During the application process, you explain that the agency utilizes an outside panel of reviewers to examine and score the applications. You state that,

at this time, all 215 open-enrollment charters have been awarded and are currently considered active. However, you assert that the agency anticipates charters will become available in the next 12 months, either through the relinquishment of a current charter or by action of the Texas legislature, and the next open-enrollment charter application cycle will commence. You argue that the agency intends to use the same panel of external reviewers for the next open-enrollment charter application cycle and that disclosure of the identities of the external reviewers would “impair the competitive aspect of the next generation application process and grant applicants a significant and unfair advantage over their competition”. Specifically, you argue “[a]pplicants could use this information to alter their applications or attempt to influence the external reviewers and thus hinder [the agency’s] ability to receive the best possible charter applicants.” Based on your representations, we conclude that the agency may withhold the submitted information under section 552.104 of the Government Code.

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 at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 336135

Enc. Submitted documents

c: Requestor
(w/o enclosures)