



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2009

Ms. Andrea Slater Gulley  
Underwood Law Firm  
P.O. Box 9158  
Amarillo, Texas 79105-9158

OR2009-06282

Dear Ms. Gulley:

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# 342661.

The Pampa Independent School District (the "district"), which you represent, received a request for information related to RFP 09-10. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state, and provide documentation showing, that the district notified Association Insurance Management, Inc. ("AIM"), Willis HRH of Amarillo ("Willis"), and TASB Risk Management Fund ("TASB") of this request and of their right to submit arguments stating why their information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances).* We have considered the exception you claim and reviewed the submitted information.

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See Gov't Code § 552.305(d)(2)(B).* As of the date of this letter, AIM, Willis, and TASB have not submitted any comments to this office explaining how release of their information would affect their proprietary interests. Therefore, these companies have not provided us with any basis to conclude that they have

a protected proprietary interest in any of the submitted information. Accordingly, the district may not withhold any of AIM's, Willis's, or TASB's submitted information on that basis.

Section 552.104 excepts from public 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 competitive bidding 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). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded and is in effect. *See id.* at 5. However, this office has determined that under some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *Id.*

You inform us that the submitted proposals relate to a contract to provide insurance to the district where the district has awarded the bid. You state that the district requests insurance bids annually. You contend that release of the submitted information would give a prospective bidder an unfair competitive advantage by allowing it to undercut future bids, preventing the district from receiving the lowest bid possible. Having considered your arguments, we find that you have demonstrated that section 552.104 is applicable to the information at issue. We, therefore, conclude that the district 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](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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/eeg

Ref: ID# 342661

Enc. Submitted documents

c: Requestor  
(w/o enclosures)