



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2009

Ms. Marney Collins Sims
General Counsel
Cypress-Fairbanks Independent School District
P.O. Box 692003
Houston, Texas 77269-2003

OR2009-07961

Dear Ms. Sims:

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# 345694.

The Cypress-Fairbanks Independent School District ("the district") received a request for copies of the district's pre-screening interview questions for teachers, principals, special education teachers, and substitute teachers, and a copy of the interview questions used by district principals to select teachers. You state that the district does not have information responsive to a portion of the request. We note that the Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App. – San Antonio 1978, writ *dism'd*). You claim that 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.

You seek to withhold the submitted information under section 552.104, which protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See Open Records Decision No. 592* (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See Open Records Decision No. 463* (1987). A general allegation that a competitor will gain an unfair advantage will not suffice; section 552.104 requires a showing of some actual or specific harm in a particular competitive situation. *See Open Records Decision No. 541 at 4* (1990). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See Open Records Decision No. 541* (1990). Furthermore, section 552.104 is a discretionary exception

to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 592 (1991) (governmental body may waive statutory predecessor to section 552.104).

You contend that release of the information at issue would give the requestor a competitive advantage in seeking employment with the district. However, upon review, we find that the district has not established that the submitted information relates to a competitive bidding situation as contemplated by section 552.104. *See* Open Records Decision Nos. 593 (1991) (predecessor to section 552.104 designed to protect governmental interests in commercial transactions), 463 (applicant seeking job offered by state not in "competition" for purposes of predecessor to section 552.104). Thus, we conclude that the district may not withhold the submitted information pursuant to section 552.104 of the Government Code. As you raise no other exceptions against disclosure, the submitted information must be released.

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 345694

Enc. Submitted documents

c: Requestor
(w/o enclosures)