



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2009

Mr. Charles K. Eldred
Public Information Coordinator
Texas Youth Commission
P. O. Box 4260
Austin, Texas 78765

OR2009-08585

Dear Mr. Eldred:

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# 346659 (TYC ORR# 12026).

The Texas Youth Commission (the "commission") received a request for "all submitted materials from National Curriculum and Training Institute (NCTI) for Solicitation # 694-9T096." 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.

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 bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

In this instance, you inform us that the request for proposal ("RFP") to which the submitted information pertains was canceled with no contract having been awarded. You assert that

the commission "may issue" another RFP for the project at issue and argue that release of the submitted information would give the requestor an advantage over competitors to the commission's detriment. Having considered your arguments, we find that you have not demonstrated that release of the submitted information would harm the commission's interests in a particular competitive situation. *See* ORD 541 at 4. Thus, because the commission has failed to demonstrate the applicability of section 552.104 to the submitted information, none of the information may be withheld under section 552.104 of the Government Code.

We note, however, that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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 at 8-9 (1990). As no other exceptions against disclosure have been raised, the submitted information must be released, but only in accordance with copyright law.

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 346659

Enc. Submitted documents

cc: Requestor
(w/o enclosures)