



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2009

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Stret
Austin, Texas 78701-2483

OR2009-11882

Dear Ms. Alexander:

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# 353311.

The Texas Department of Transportation (the "department") received a request for information pertaining to a specified purchase order and a specified bid. You state the department is releasing some of the requested information. You also state the department takes no position on the public availability of the remaining requested information. You believe, however, that this request for information may implicate the proprietary interests of the University of Texas at Arlington (the "university"). You state, and have submitted documentation showing, the department has notified the university of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released. We received correspondence from the university. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The university asserts its proposal is excepted from disclosure under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). This exception protects a governmental body's interests in connection with competitive bidding and in

certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

The university states it engages in the business of providing continuing education services. The university indicates that it competes with private entities for contracts to provide these continuing education services. Based on these representations, we conclude that the university has demonstrated that it has specific marketplace interests and may be considered a "competitor" for the purposes of section 552.104. *See* ORD 593.

The department informs us, and the submitted information confirms, that the information at issue consists of a bid proposal from the university that resulted in a contract with the university. The university argues that release of its bid proposal will give its future competitors an unfair advantage in any ongoing or future competitive proposals. Upon review of the university's argument, we find that the university has failed to demonstrate how the release of the information at issue would affect a specific ongoing competitive bidding situation. *See* Open Records Decision No. 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative to withhold information under predecessor statute). Thus, the university has failed to demonstrate the applicability of section 552.104 to the submitted bid proposal. Accordingly, the department may not withhold the submitted information under section 552.104 of the Government Code.

Although we understand the university to argue that its proposal is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of private third parties, not the interests of a governmental body. Thus, we do not address the university's arguments under section 552.110 and none of the submitted information may be withheld on that basis. As no further exceptions to disclosure have been raised, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 353311

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John D. Hall
Vice President for Administration and Campus Operations
University of Texas at Arlington
305 Davis Hall
Arlington, Texas 76019-0119
(w/o enclosures)