



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2009

Mr. James Tourtelott
Assistant General Counsel
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711

OR2009-16009

Dear Mr. Tourtelott:

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# 360993.

The Texas Higher Education Coordinating Board (the "board") received a request for all correspondence between several specified entities regarding the board's efforts to relocate its offices.¹ You state the board has provided some of the requested information to the requestor. You claim the submitted e-mails and attachments are excepted from disclosure under sections 552.104 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted e-mails were created after the request was received. This information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Section 552.104 of the Government Code 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

¹You state the board sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

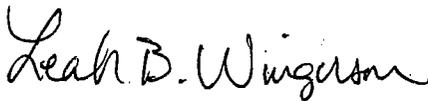
to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except information from disclosure after bidding is completed and a contract has been executed. *See* Open Records Decision No. 541 (1990).

You explain the board is currently searching for new leased commercial office space and is considering bids from several entities. You state the bidding process is not complete and a contract has not been executed. You indicate release of the submitted correspondence, including specific offers and financial details regarding the board's relocation decisions, at this stage in the bidding process would harm the board's ability to negotiate a final agreement. Based on your representations, we conclude the board may withhold the submitted e-mails and attachments under section 552.104 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 360993

Enc. Submitted documents

c: Requestor
(w/o enclosures)