



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2010

Mr. James P. Allison  
Allison, Bass & Associates, L.L.P.  
Attorney for Texas Schools Property Casualty Cooperative  
402 West 12th Street  
Austin, Texas 78701

OR2010-04546

Dear Mr. Allison:

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# 374481.

The Texas Schools Property & Casualty Cooperative Intergovernmental Risk Pool (the "cooperative"), which you represent, received a request for the following: (1) the latest audited financial statement for fund years ending in 2008 and 2009; (2) the audited financial statement report for the 2007-2008 fund year, or any documents regarding the status of the audit; (3) the latest actuarial report of the required "Loss Fund Rates" and "Reserve Analysis;" and (4) a list of each current membership as of September 1, 2009. You claim the requested information is excepted from disclosure under sections 552.104, 552.110, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that the cooperative failed to comply with the Act's procedural requirements with respect to an earlier request for the information responsive to category one of the instant request. *See id.* §§ 552.301(a), .302. In response to the requestor's earlier request for "the latest audited financial statement for fund years ending in 2008 and 2009," the cooperative asserted that it had no responsive information. However, the cooperative now seeks to withhold information responsive to this portion of

the request. We note that the submitted information that is responsive to this portion of the request was created after the date that the cooperative received the requestor's previous request for this information. The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). Accordingly, we conclude the cooperative complied with the procedural requirements of section 552.301, and we will address the cooperative's arguments against disclosure of the submitted information.

Section 552.104 of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. 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).

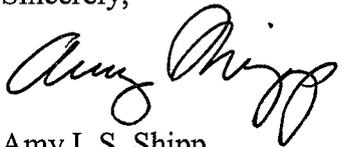
You argue that release of the information at issue would harm the interests of the cooperative in a competitive situation. You inform us that the cooperative determines premium rates and coverage limits to ensure that the cooperative remains actuarially sound and that other intergovernmental risk pools, as well as private insurance carriers, compete with the cooperative to provide liability coverage for Texas school districts and other governmental entities. You state that the requested financial statements contain the negotiated and reinsurance rates obtained by the cooperative and reveal the cooperative's basis for calculating member contributions and its underwriting formula. You therefore argue that release of this information would likely result in the cooperative being underbid by competitors, causing specific harm to the cooperative's marketplace interests in a particular competitive situation. You also argue that a competitor could utilize loss fund numbers from the requested balance sheet and income statement to compete with the cooperative for its members or misrepresent the numbers as being indicative of a weak financial standing. You also state that the submitted list of current cooperative member districts is not widely known to the cooperative's competitors and release of this information would provide them with an opportunity to market directly against the cooperative for the cooperative's current members. Based on these representations and our review, we find that the cooperative has demonstrated

that it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. Further, we find that you have demonstrated that release of the submitted financial statements would cause specific harm to the cooperative’s marketplace interests. We also find that you have demonstrated that release of the information pertaining to the cooperative’s current members would cause actual or potential harm to the cooperative’s marketplace interests. We therefore conclude that the cooperative may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments 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](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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/rl

Ref: ID# 374481

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)