



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2013

Mr. Andrew D. Clark
Counsel for the Texas Education Service Center Curriculum Collaborative
Powell & Leon, L.L.P.
1706 West Sixth Street
Austin, Texas 78703

OR2013-03249

Dear Mr. Clark:

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# 479805.

The Texas Education Service Center Curriculum Collaborative ("collaborative"), which you represent, received a request for "any and all posted agendas and official minutes from any and all meetings held by the [g]overning [b]oard of the [collaborative] since its inception." You claim some of the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you argue the submitted information is excepted under section 552.110 of the Government Code. Section 552.110, however, protects the interests of third parties, not governmental bodies. *See* Open Records Decision No. 319 (1982) (statutory predecessor to section 552.110 designed to protect third-party interests that have been recognized by the courts). Because no third parties assert any of the submitted information should be protected under section 552.110, we conclude the submitted information may not be withheld under section 552.110.

Section 552.104 of the Government Code excepts from required public 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 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 and to protect a governmental body's interests in certain other competitive situations. *See* Open Records Decision Nos. 593 (1991), 592 (1991) (construing statutory predecessor). 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 bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

This office has held that a governmental body may also 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 explain some of the submitted information pertains to the collaborative's decisions regarding requests for proposal ("RFP") bids submitted by its vendors who compete with one another to provide support products, technology products, and other ancillary products and services to accompany and enhance the collaborative's curriculum product, CSCOPE. Additionally, you state the vendors participate in the collaborative's RFP process for ancillary products and services on a regular basis. Thus, you contend release of the information at issue would provide vendors with an advantage in bidding, which would thwart the competitive process and result in a higher cost product for the collaborative's customers, thereby harming the collaborative's interests in a competitive situation. You also assert the collaborative has a specific marketplace interest in the curriculum marketplace because it is competing with several for-profit entities to provide curriculum to public school districts. Therefore, you contend release the information at issue pertaining to strategic decisions regarding the development of CSCOPE and the collaborative's relationships with the vendors would allow competitors to develop similar products, causing specific harm to the collaborative's marketplace interests in a particular competitive situation.

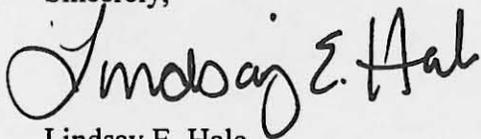
Based on these representations and our review, we find you have demonstrated the collaborative has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. Further, we find you have demonstrated release of some of the information at issue would harm the collaborative's interests in a competitive situation and release of some of the information at issue would cause specific harm to the collaborative's

marketplace interests. We therefore conclude the collaborative may withhold the information we have marked under section 552.104 of the Government Code. However, we conclude you have failed to demonstrate how release of the remaining information at issue will either compromise the bidding process and harm the collaborative's interests in a competitive situation or cause specific harm to the collaborative's marketplace interests. Consequently, we conclude the collaborative may not withhold any of the remaining information at issue under section 552.104 of the Government Code. As you raise no further exceptions to disclosure, the collaborative must release the remaining information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 479805

Enc. Submitted documents

c: Requestor
(w/o enclosures)

