



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2014

Mr. W. Montgomery Meitler
Senior Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2014-05672

Dear Mr. Meitler:

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# 518909 (TEA PIR# 21190).

The Texas Education Agency (the "agency") received a request for a list of all school districts and charter schools that have purchased the State-Sponsored Student Information System from Skyward, Inc. ("Skyward") and the Texas Computer Cooperative (the "TCC") in response to a specified request for offers. You state you will release some of the information. Although you take no position with respect to the public availability of the requested information, you state release of this information may implicate the proprietary interests of the TCC. Accordingly, you state and provide documentation showing, you have notified this third party of the request for information and of its rights to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *See also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have received comments from the TCC. We have considered the submitted arguments and reviewed the submitted information.

The TCC raises section 552.104 of the Government Code, which excepts 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).

The TCC explains it is a marketplace competitor in the statewide student data services marketplace.¹ The TCC further contends it has specific marketplace interests because it competed for and was awarded request for offer number 701-11-030, a contract in the student data service marketplace. Based on these representations, we find the TCC has legitimate marketplace interests in the development and sale of student data services for purposes of section 552.104. The TCC asserts release of the submitted information would create potential harm to the TCC’s interests in the marketplace and give an advantage to competitors in the industry by allowing competitors to gain knowledge of the TCC’s client base and product usage in order to target the TCC’s clients. Upon review, we conclude the TCC has sufficiently demonstrated release of the submitted information would harm the TCC in a specific competitive situation. *See* ORD 593. Accordingly, the agency may withhold the submitted information in its entirety under section 552.104 of the Government Code on behalf of the TCC.²

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.texasattorneygeneral.gov/open/>

¹We note the TCC is a consortium of twenty Texas Education Services Centers.

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 518909

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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