



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 13, 2017

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

OR2017-15666

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# 665783 (TEA PIR# 29560).

The Texas Education Agency (the "agency") received a request for information pertaining to open enrollment charter applications. You state you have released some information. You state you will withhold information pursuant to section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009) and social security numbers

pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You inform us that under section 12.101(b-1) of the Education Code, the commissioner of education is limited in the number of open-enrollment charters that may be granted. You state in previous application cycles, the agency has received more applications than available charters. You also state this has made the charter application process highly competitive with only the more promising applications receiving a charter. You explain that winning an open-enrollment charter makes both state and federal funds available to a charter holder, including federal start-up funds, state aid, and federal grant funds. You state the agency utilizes a panel of external reviewers who examine and score charter applications. You explain the agency intends to utilize the same reviewers for the next charter application cycle. You assert applicants could use the information to hinder the agency’s ability to receive the best possible charter applicants. After review of the information at issue and consideration of the agency’s arguments, we find you have established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the agency may withhold the submitted information under section 552.104(a) of the Government Code.

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.

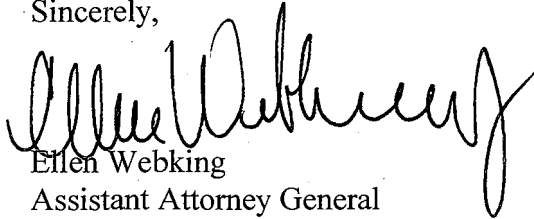
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<sup>1</sup>Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

<sup>2</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/bw

Ref: ID# 665783

Enc. Submitted documents

c: Requestor  
(w/o enclosures)