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AUSTIN, TEXAS 78711

JOHN G. HILL
ATTORNEY GENERAL

March 25, 1976

The Honorable Joseph D. Hawkins
Commissioner of Insurance
State Board of Insurance
1110 San Jacinto
Austin, Texas 78786

Open Records Decision No. 124

Re: Grant application
submitted by State Board
of Insurance to the United
States Social Security
Administration.

Dear Commissioner Hawkins:

You request our decision under section 7 of the Open Records Act, article 6252-17a, V.T.C.S., on whether a copy of a grant application submitted to the Social Security Administration by the State Board of Insurance is excepted from required public disclosure by either section 3(a)(1) or 3(a)(4) of the Act.

You contend that the information is "information deemed confidential by law" and that it is within the section 3(a)(1) exception by virtue of a provision in the federal Freedom of Information Act which excepts ". . . trade secrets and commercial or financial information obtained from a person and privileged or confidential. . . ." 5 U.S.C. § 552(b)(4). You report that the Social Security Administration regards pending grant applications as confidential under this exception in the federal Act. The fact that information held by a federal agency is excepted from disclosure under the Federal Freedom of Information Act does not necessarily except that same information from disclosure under the Texas Open Records Act when it is held by a Texas agency. See Open Records Decision No. 59 (1974). However, even assuming that this were so, we do not believe that this information is excepted from disclosure under the federal Act. The contention that the federal section 552(b)(4) exception is applicable to grant applications, including pending renewal applications, submitted to the National

Institute of Mental Health was rejected in Washington Research Project, Inc. v. Department of Health, Education and Welfare, 504 F.2d 238 (D.C. Cir. 1974), cert. denied 421 U.S. 963 (1975). The court said:

[W]e hold that research designs submitted in grant applications are not exempt from disclosure under the Act. This holding extends to all types of applications -- initial, continuation, supplemental, and renewal -- and to progress reports made by grantees as part of the last three kinds of applications. Id. at 245.

In light of this clear holding that the federal exception is inapplicable to this type of information, we find no merit in the contention that the grant application is made confidential under federal law. We have not been referred to, nor have we found, any other law making this information confidential so as to bring it within the section 3(a)(1) exception.

You also contend that the grant application is excepted from disclosure by section 3(a)(4), which excepts "information which, if released, would give advantage to competitors or bidders." In Open Records Decision No. 99 (1975), we held this section inapplicable to the detailed financial statement of a municipally-owned radio station claimed to be in a competitive position with privately owned stations.

We have inspected the information requested but are unable to determine how or why this exception might apply. In reference to a claim under this exception, we have said:

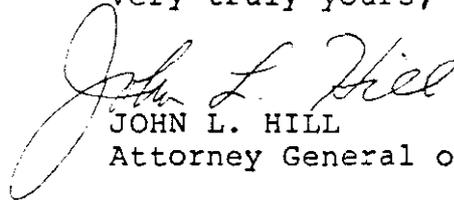
The Act is clearly structured to require the agency to bear the burden of establishing that requested information falls within an exception. The bare claim that this exception applies without additional information of how competitors might obtain an advantage. . . does not provide us with a sufficient basis on which to agree that these exceptions apply. We

believe a 3(a)(4) . . . claim by an agency must be accompanied by information detailing why the exception applies. Without such a demonstration, the presumption in favor of disclosure prevails, and the information must be made public. Attorney General Opinion H-436 (1974).

We do not believe that the general allegation of a remote possibility that some unknown competitor might gain some unspecified advantage by disclosure of this grant application is a sufficient basis on which to determine that the release of the information "would give advantage to competitors" within the meaning of section 3(a)(4) of the Act. (Emphasis added). C.f. Attorney General Opinion H-483 (1974) [section 3(a)(3) litigation exception not applicable unless anticipation of litigation is a reasonable one related to a specific matter as opposed to a remote possibility].

Since the commission has failed to meet the burden of establishing how or why this exception is applicable to the information or any part of it, it is our decision that the information is not excepted from disclosure under section 3(a)(4) of the Act. Thus, the information requested is public and must be disclosed.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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