



The Attorney General of Texas

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Honorable Jerome Chapman,
Commissioner
Texas Department of Human
Resources
John H. Reagan Building
Austin, Texas 78701

Open Records Decision No. 184

Re: Whether a transportation company's plan of operation filed with the Department of Public Welfare as an attachment to a contract with the Department is public under the Open Records Act.

Dear Commissioner Chapman:

You have asked whether a transportation company's plan of operation filed with the Department of Human Resources as an attachment to a contract is public under the Open Records Act, article 6252-17a, V.T.C.S.

Following a request for bids, the Department of Human Resources awarded a medical transportation service contract to Greater Houston Transportation Company (GHTC) for the purpose of providing transportation to and from medical facilities to all eligible clients within ten counties surrounding and including Harris County. Another bidder subsequently requested a copy of the plan of operation submitted by GHTC, which contends that certain information contained therein is excepted from disclosure under section 3(a)(10) of the Open Records Act, as

trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

In Open Records Decision No. 175 (1977), we held that portions of a bid proposal submitted by Electronic Data Systems Corporation (EDS) in connection with the Texas Medicaid Information System (TMIS) were excepted from disclosure under section 3(a)(10). We based that decision, however, upon several factors not present here. In the first place, EDS had twice sought to enforce restrictive covenants in its employment contracts to prevent former employees from disclosing the type of information contained in TMIS. EDS maintained extensive security at each of its facilities, and included in its contracts appropriate clauses to insure the confidentiality of TMIS. Furthermore, a number of recent judicial decisions had held information similar to that which formed the basis of TMIS to be within the scope of the "trade secret" doctrine.

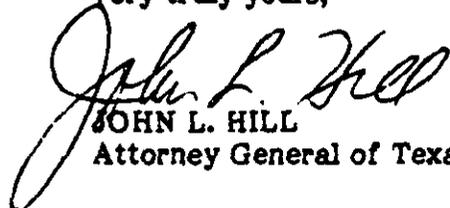
By contrast, GHTC has failed to demonstrate that it has undertaken specific and concrete measures to protect the confidentiality of its plan of operation. The company's brief states merely that "the information is treated internally as confidential and simply has not been made available to those outside the business." More significantly, we do not believe that the information which GHTC seeks to withhold may fairly be said to constitute the kind of technical data at issue in Open Records Decision No. 175. The plan consists of a description of available services and the procedures used to implement them, a listing of program goals, objectives and performance indicators, and a delineation of cost estimates, reporting and evaluation. We are not aware of any court decision which has held this kind of information to be included within the meaning of "trade secret."

GHTC also contends that portions of its plan of operation are excepted from disclosure under section 3(a)(4), which excepts

information which, if released, would give advantage to competitors or bidders.

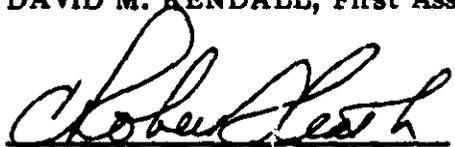
As we stated in Open Records Decision No. 75 (1975), we do not believe that this exception is applicable when bidding on a particular contract has been completed and the contract is in effect. Indeed, section 6(a)(3) specifically makes public "information in any . . . contract dealing with the receipt or expenditure of public or other funds by governmental bodies. . . ." It is therefore our decision that the plan of operation filed by GHTC with the Department of Human Resources is public information and should be disclosed.

Very truly yours,


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Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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