



# The Attorney General of Texas

July 17, 1978

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Honorable M. L. Brockette  
Commissioner of Education  
Texas Education Agency  
201 East Eleventh Street  
Austin, Texas 78701

Open Records Decision No. 198

Re: Whether the technical proposal of a company which has received a contract from the Texas Education Agency to assess the educational achievement of selected groups of students is public under the Open Records Act.

Dear Commissioner Brockette:

You have asked whether a technical proposal submitted by a company which has contracted with the Texas Education Agency is public under the Open Records Act, article 6252-17a, V.T.C.S.

Following a request for bids, the Texas Education Agency awarded a contract to Research Triangle Institute (RTI), to assess the educational achievement of selected groups of students. A competitor subsequently requested a copy of the technical proposal which forms the basis of the contract. RTI contends, on behalf of one of its subcontractors, that certain portions of the proposal are 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 contract 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 largely upon the substantial efforts made by EDS to protect the confidentiality of its material, including prior successful attempts to enforce restrictive covenants in employment contracts, maintenance of extensive security at each of its facilities, and the inclusion in its contracts of appropriate language to assure the confidentiality of TMIS.

On the other hand, in Open Records Decision No. 184 (1978), we held that a transportation company's plan of operation, submitted to the Department of Human Resources in connection with a medical transportation service contract, was not within the scope of section 3(a)(10). The company made no attempt to demonstrate the character of the material in terms of the factors described in the Restatement of Torts, and, in addition, we were unable to conclude that the disputed information could "fairly be said to constitute the kind of technical data at issue in Open Records Decision No. 175."

We invited RTI to summarize its objections to disclosure, with particular reference to "the six criteria developed by the Restatement of Torts for determining whether particular information constitutes a trade secret." We enclosed copies of Open Records Decision Nos. 175 and 184 which indicate "the various factors we consider significant in reaching this kind of determination."

In the present instance, RTI has chosen to rely upon the statement of its subcontractor, which asserts, without elaboration, that portions of its technical proposal "are the result of years of independent effort and expense." The subcontractor contends that "substantial competitive harm" would result from disclosure and that "no perceptible public interest" would be served thereby, but it does not refer to the extent to which the information is known, either to employees or to others, the ease or difficulty with which it might be acquired or duplicated, or to any prior efforts to preserve its confidentiality. Neither does the subcontractor furnish more than conclusory observations about the value of the information or the amount of effort or money expended in its development. Furthermore, we have not been apprised of any court decision which has held this particular kind of information to be within the ambit of "trade secret." As a result, we are obliged to conclude that the technical proposal submitted to the Texas Education Agency by RTI is not excepted under section 3(a)(10), but is public information and should be disclosed.

Very truly yours.



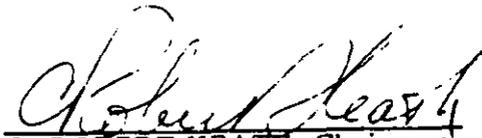
JOHN L. HILL

Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant

A handwritten signature in cursive script, appearing to read "C. Robert Heath".

C. ROBERT HEATH, Chairman  
Opinion Committee

jsn