



The Attorney General of Texas

December 21, 1982

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Mr. Michael F. Hanratty
Executive Director
Housing Authority of the City
of Fort Worth
P. O. Box 430
Fort Worth, Texas 76101

Open Records Decision No. 331

Re: Letter from city housing
authority to Department of
Housing and Urban Development
on application for development
of housing units

Dear Mr. Hanratty:

The Fort Worth Housing Authority has applied to the United States Department of Housing and Urban Development [hereinafter HUD] for funds to finance a low-income housing project. You have received a request for access to the materials that were sent to HUD in connection with this application, which consist of a cover letter and numerous enclosures. You have asked whether sections 3(a)(3), 3(a)(4) and 3(a)(11) of the Open Records Act, article 6252-17a, V.T.C.S., authorize you to deny this request.

Section 3(a)(3) excepts from required public disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

In support of your section 3(a)(3) claim, you state that the individual who seeks access to these materials:

has publicly stated on more than one occasion that he and members of a neighborhood association intend to file suit against the authority to block development of the 94 housing units.

Where there is nothing more to substantiate a section 3(a)(3) claim than mere threats of litigation, we cannot conclude that the section applies. This office has repeatedly held that the mere chance

of litigation is not sufficient to trigger section 3(a)(3). Open Records Decision Nos. 311 (1982); 288 (1981); 183 (1978). The facts you have presented do not provide concrete evidence that a lawsuit will be filed. See, e.g., Open Records Decision Nos. 288, 266 (1981). Section 3(a)(3) is therefore inapplicable.

Section 3(a)(4) excepts "information which, if released, would give advantage to competitors or bidders." In this instance, you inform us that HUD has not yet granted the housing authority's application for funds for this development project, and you contend that the release of this information prior to such award could "give advantage to competitors."

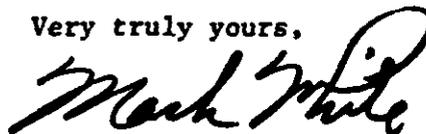
This office has consistently construed section 3(a)(4) narrowly, requiring a showing of some specific actual or potential harm in a particular competitive situation. See, e.g., Open Records Decision Nos. 233 (1980); 222 (1979); 203, 184 (1978); 170 (1977). There is no "competitive situation" involved here. You advise that although several developers received the proposal documents only one actually submitted a proposal. Since only one developer is seeking this contract, there are no "competitors" who could gain an advantage from the release of this information. Compare Open Records Decision No. 170 (1977) (release of bids not required while bid negotiations being conducted and bidders could submit additional information pertaining to their bids, because "competition" still involved and other bidders could gain advantage); Open Records Decision No. 46 (1974) (identities of those who submitted bids not required before last day of bidding). We therefore conclude that section 3(a)(4) is inapplicable.

Section 3(a)(11) excepts from disclosure under the Open Records Act:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency.

This section protects information in the custody of a governmental body only to the extent that it consists of "advice, opinions and recommendations." Open Records Decision Nos. 313 (1982); 273 (1981); 239 (1980). We have examined the cover letter and the enclosures, and we conclude that only a very small portion of these materials may be characterized as advice, opinion and recommendation and may therefore be withheld. The remainder of the materials -- everything that is not marked -- must be released.

Very truly yours,



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