



**THE ATTORNEY GENERAL
OF TEXAS**

December 31, 1986

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Gary Mauro
Commissioner
General Land Office
1700 North Congress Avenue
Austin, Texas 78701

Open Records Decision No. 453

Re: Whether the identities of persons who received bid packets on a sale of land is subject to disclosure under the Open Records Act, article 6252-17a, V.T.C.S., where the sale is not completed

Dear Mr. Mauro:

Section 3(a)(4) of the Open Records Act, article 6252-17a, V.T.C.S., excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." You have asked whether this section authorizes the General Land Office to withhold the identities of "those who received bid packets for the recent offer by this office to two tracts of land controlled by the Texas Board of Corrections." Your argument is as follows:

The tracts were to be sold by competitive bidding. However, no qualified bids were received and the land will be offered again in the near future. Because the land has yet to be awarded, it is my contention that the ~~list of potential~~ purchasers must remain confidential in order to maintain the integrity of the competitive bidding process and insure that no bidder is given an unfair advantage.

Those who received bid packets may bid again at the next offering. Disclosing their identities now is likely to put them at a disadvantage because knowledge of who has shown interest in acquiring a parcel of land can affect its perceived value.

. . . .

Disclosure of the names of potential purchasers can sway competitive bidding especially for real estate, whether it be a mineral estate or a tract

destined for commercial development. The fact that a certain individual or company is contemplating development of the land could intimate to others that the area has a particular speculative value and encourage them to submit or revise a bid. Thus, simply because his interest in the land has become public a potential purchaser may be put at a disadvantage as opposed to another bidder.

Similarly, knowledge of the potential purchaser's identity could provide a competitor with clues suggesting certain facts about the land affecting its prospects and value. The individual whose identity had been revealed could then lose any edge he previously enjoyed as a result of details that only he had been keen enough to discern.

You contend that Attorney General Opinion MW-591 (1982) is on point. That opinion held that the General Land Office may withhold "the identities of those who nominate tracts to be leased by the School Land Board at mineral lease sales." It noted that the class of potential nominators could be divided into two subclasses: those who may (and likely will) themselves bid for the mineral rights to the tract which they nominate, i.e., private individuals and companies, and those who will not do so, i.e., the School Land Board and the General Land Office. It then said:

This office has previously recognized that 'information concerning the identity of those who have submitted bids (before the last day of bidding), would be of advantage to other competitors or bidders. . . .' Open Records Decision No. 46 (1974). See Open Records Decision No. 170 (1977). The policy reason for withholding the identities of bidders is obvious. Merely knowing the identities of other bidders could furnish a bidder with insights concerning the others' competitive capabilities which he may then use in structuring his own bid. Thus, if, when the Land Office receives a request for the identity of a nominator, that nominator has already bid on the tract which he nominated, his identity may be withheld under Open Records Decision No. 46. He would then be a 'bidder' and disclosure of his identity could harm him, particularly since the identities of other bidders for the same mineral rights for which he bid may be withheld. Furthermore, even if a

nominator has not yet bid when his identity is requested, we conclude that his identity may be withheld. We understand that individuals and companies which nominate tracts for lease usually bid for the mineral rights to those tracts. Thus, even if a nominator has not yet bid on the tract which he nominated, he will likely do so in the future. Therefore, because the likelihood that he will bid is substantial and because by the time he does bid it will be too late to preserve his identity, the identity of a nominator must be protected even before he bids. (Emphasis in original).

We believe that Attorney General Opinion MW-591 must be limited to its facts. The basis for its conclusion that the General Land Office may withhold the identities of people who nominate tracts to be leased by the School Land Board even if they have not yet bid for the mineral rights to those tracts was that past practice establishes that these nominators will almost certainly bid for these rights. The information submitted to this office in connection with this request, in other words, demonstrated a "substantial likelihood" that those who nominate these tracts will be among the class of bidders for their mineral rights. Here, by contrast, it has not been shown that there is a substantial likelihood that people who received bid packets for the prior land sale will bid for the tracts when they are reoffered for sale. The most that has been asserted is that these bidders "may" submit new bids at the next sale.

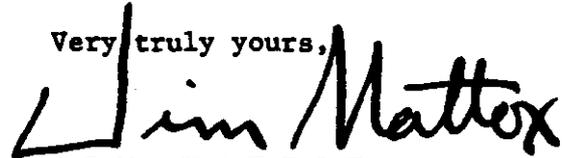
This office has construed section 3(a)(4) narrowly, requiring a showing of actual or potential harm in a particular competitive situation. See, e.g., Open Records Decision Nos. 331, 309 (1982); 222 (1979). We do not believe the requisite showing has been made here. On the contrary, we believe that this matter comes closer to being controlled by Open Records Decision No. 46 (1974). There, this office held that the State Board of Control could not withhold a list of 180 companies which had expressed an interest in being informed of purchases of certain items to be made in the future and any advertisements soliciting bids for those items but had not actually bid for them. The decision concluded that

we are unable to find that knowledge of the identity of the numerous potential bidders for the requested commodity class is information which, if released, would give advantage to competitors or bidders.

At best, the matter at hand involves mere "potential bidders" of the type referred to in Open Records Decision No. 46.

The Open Records Act states that its provisions are to be "liberally construed in favor of the granting of any request for information." Sec. 14(d). This directive, as well as the reasons we have discussed, compels us to conclude that section 3(a)(4) is inapplicable in this instance.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, prominent "J" at the beginning.

J I M M A T T O X

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