



**THE ATTORNEY GENERAL
OF TEXAS**

February 20, 1987

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Ann Richards
State Treasurer
P. O. Box 12608
Austin, Texas 78711

Open Records Decision No. 463

Re: Whether inventories of the contents of safe deposit boxes subject to escheat by the state treasurer are excepted from disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

Dear Ms. Richards:

You received a request under the Texas Open Records Act, article 6252-17a, V.T.C.S., for copies of inventories of the contents of safe deposit boxes subject to escheat by the state treasurer. Records held by a governmental body are open under article 6252-17a unless they fit within one of the act's specific exceptions to required public disclosure. You contend that section 3(a)(4) of the act protects these inventories.

Section 3(a)(4) protects "information which, if released, would give advantage to competitors or bidders." Section 3(a)(4) applies when it is shown that the release of information could cause specific harm in a particular competitive situation. Open Records Decision Nos. 331, 309 (1982). A general allegation of a remote possibility that some unknown competitor might gain some unspecified advantage by disclosure fails to invoke the protection of section 3(a)(4). Open Records Decision No. 124 (1976).

You assert that "[c]laimants of unclaimed property are in a sense competitors for the property." The treasury asks that original owners of safe deposit boxes describe the contents of abandoned safe deposit boxes. When only one person seeks information about the contents of a safe deposit box, however, no "competition" exists for purposes of section 3(a)(4). See Open Records Decision No. 331. You also indicate that occasionally more than one claim is made for the contents of one safe deposit box. You state that in such cases the treasury will request that both claimants describe the contents of the safe deposit box in question as evidence of rightful ownership. You suggest that "release of the contents to one claimant or that claimant's agent would give one claimant an advantage over the other claimant."

These assertions overlook several general principles applicable under the Open Records Act. Under the act, a government body cannot

make "selective disclosure"; if information does not fall within a specific exception, it must be disclosed to any person who requests it. See art. 6252-17a, §14(a); Open Records Decision No. 192 (1978). Consequently, if these inventories are public information, neither claimant would have an advantage over the other. See Open Records Decision No. 231 (1979). In Open Records Decision No. 231, a state agency contended that a feasibility study on a proposed project is protected by section 3(a)(4) because release of the study would provide a competitive advantage to a potential bidder. The decision rejected the agency's argument because the study would be available to all persons who wanted it; no potential bidder could gain an unfair competitive advantage.

Additionally, two "competing" claimants for property subject to escheat do not fit the category of persons section 3(a)(4) was intended to protect. Section 3(a)(4) applies primarily to competition for government contracts and has been construed to protect the sealed bid process. See Open Records Decision No. 233 (1980). Decisions dealing with section 3(a)(4) generally involve specific commercial and contractual matters. See, e.g., Open Records Decision Nos. 331 (1982); 231 (1979); 170 (1977). Two claimants who both assert a property interest in the contents of a safe deposit box subject to escheat proceedings held by the state are no more in "competition" for purposes of section 3(a)(4) than two job applicants seeking one job offered by the state. Claimants attempt to establish a property right, not a competitive advantage. Further, as indicated, a general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 3(a)(4). The only impact the release of the inventories would cause is the loss to the State Treasury of one of its more questionable "advantages" in verifying property ownership.

Nevertheless, you indicate that

[r]eturn of property to rightful owners is a very important statutory function of the Treasury under the unclaimed property statutes. If the Treasury were to release information used in the identification process, it would diminish significantly the possibility of returning property to rightful owners. (Emphasis in original).

Although section 3(a)(4) protects governmental interests by assuring that the competitive bidding process will be truly competitive, it may not be claimed to protect a governmental body's "competitive advantage" because they cannot be regarded as being in competition with private enterprise. Open Records Decision No. 231. Consequently, you must release inventories of the contents of safe deposit boxes subject to escheat.

Moreover, the statutes to which you refer require the release of a description of the contents of abandoned safe deposit boxes in some circumstances. Chapter 74 of the Texas Property Code governs the delivery of and claims to abandoned property. Section 74.101 of the Property Code requires holders of property that is presumed abandoned to file a report on that property with the state treasurer. Subsection (c)(2) of section 74.101 requires the report to include "a brief description of the property." Section 74.201 requires the treasurer to publish notice after the filing of the reports required by section 74.101. Subsection (b) of section 74.201 provides:

(b) The published notice must state that the reported property is presumed abandoned and subject to this chapter and must contain:

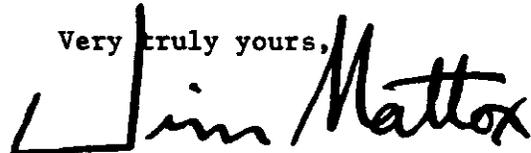
(1) the name and city of last known address, if any, of each person listed in the property report filed under section 74.101, listed alphabetically by name;

(2) a statement that, by addressing an inquiry to the State Treasurer, any person possessing an interest in the reported property may obtain information concerning the amount and description of the property and the name and address of the holder; and

(3) a statement that if the owner does not present proof of the claim to the holder and establish the owner's right to receive the property within the period provided by section 74.301, the property will be delivered to the State Treasurer and that all claims made after that delivery must be sent to the State Treasurer. (Emphasis added).

See also Tex. Prop. Code §74.307 (amount credited to owners must be available for public inspection).

Very truly yours,



J I M M A T T O X
Attorney General of Texas

JACK HIGHTOWER
First Assistant Attorney General

MARY KELLER
Executive Assistant Attorney General

RICK GILPIN
Chairman, Opinion Committee

Prepared by Jennifer Riggs
Assistant Attorney General