THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

February 15, 1989

Mr. F. Patrick Whelan
Texas Education Agency
1701 North Congress Ave.
Austin, Texas 78701-1494

Dear Mr. Whelan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5374; this decision is OR89-54.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

You received a request for a copy of the winning proposal on a project to develop an identification, tracking, and referral system. You contend that the information requested is exempt from required public disclosure under sections 3(a)(2) and 3(a)(4). We disagree and hold that the information is public.

The company submitting the winning proposal objects to the disclosure of biographical data of its employees. You ask whether section 3(a)(2) of the Open Records Act excepts this information from disclosure. Section 3(a)(2) excepts information in personnel files, the release of which would constitute a clearly unwarranted invasion of privacy. It applies, however, only to employees of a governmental body. See Open Records Decision No. 345 (1982). The contractual relationship between the Texas Education Agency and the company awarded the contract does not make the company's

employees the employees of the agency. See generally 44 Tex. Jur. 3d Independent Contractors § 12 (1985). Thus, the resumes in question are not covered by the exemption.

You also contend that the requested information is excepted by section 3(a)(4). Section 3(a)(4) excepts "information which, if released, would give advantage to competitors or bidders." It applies when there is a showing that release of the information would result in specific actual or potential harm in a particular competitive situation. See Open Records Decision No. 463 (1987). A general allegation or a remote possibility that an unknown competitor might gain an advantage by disclosure is insufficient to to invoke section 3(a)(4). Id. You assert that release of the information will give an advantage to competitors, but you do not explain the specific harm posed by its release in a particular competitive situation. Furthermore, this office has previously held that resumes providing information about the educational and professional experience of the employees of a successful bidder on a public contract is not excepted by any provision of the Open Records Act. Open Records Decision No. 306 (1982). Accordingly, we conclude that the requested information is not excepted by section 3(a)(4).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-54.

Yours very truly,

Open Government Section
of the Opinion Committee
Prepared by Patricia Barnhard
Assistant Attorney General

PB/bc

Copy to: Mr. Kenneth O. Fincher
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Ref.: ID# 5374

Enclosure: (documents submitted for review)