



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 3, 1989

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002

Attn.: Ms. Rosalinda Garcia

Dear Mr. Driscoll:

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# 6889; this decision is OR89-227.

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.

The Risk Management Department of Harris County received a number of requests for copies of insurance contracts covering the Washburn Tunnel and other facilities owned and/or operated by Harris County. You assert that sections 3(a)(1), 3(a)(4), and 3(a)(10) protect the contracts from required public disclosure.

Section 3(a)(1) protects "information deemed confidential by law," including statute. You suggest that section 101.104 of the Texas Civil Practice and Remedies Code protects government insurance contracts from required public disclosure under the Open Records Act. Section 101.104 provides:

(a) Neither the existence nor the amount of insurance held by a governmental unit is

admissible in the trial of a suit under this chapter.

(b) Neither the existence nor the amount of the insurance is subject to discovery.
(Emphasis added.)

It is not clear that this provision makes copies of contracts "confidential by law" within the meaning of section 3(a)(1); its primary purpose is to make such information inadmissible in specific trials. See generally Burke v. Yudelson, 378 N.Y.S.2d 165, 166 (N.Y. App. Div. 1976); Attorney General Opinion JM-1048 (1989).

It is unnecessary to resolve this issue, however, because the information at issue is expressly made public by statute. Section 262.030 of the Texas Local Government Code provides, in part:

(b) If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be open to public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such. (Emphasis added.)

The proposal ordinarily becomes the contract once the proposal is accepted.

Moreover, sections 6(3) and 6(5) of the Open Records Act expressly make public:

(3) information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law;

. . . .

(5) all working papers, research material, and information used to make estimates of the need for, or expenditure of, public funds or taxes by any governmental body, upon completion of such estimates.

As this office stated in Open Records Decision No. 514 (1988):

The list of information expressly deemed public in section 6 does not override the act's exceptions to disclosure. Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.1d 177, 185 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision Nos. 280 (1981); 233 (1980). On the other hand, the legislature did not intend the section 6 enumeration to be totally meaningless. In this case, it indicates that the general terms of a contract may not properly be withheld under the Open Records Act. See Open Records Decision No. 75 (1975). At the least, it heightens a governmental body's burden under the act of showing which exceptions apply and why. See id.; see also Open Records Decision Nos. 395 (1983); 208 (1978).

You also suggest that sections 3(a)(4) and 3(a)(10) protect the contracts. Once a public contract is awarded, section 3(a)(4) no longer applies. See Open Records Decision Nos. 306 (1982); 184 (1978). You do not show how section 3(a)(10) applies to the contracts requested here. Consequently, sections 3(a)(4) and 3(a)(10) do not protect the contracts; they must be released. See Open Records Decision No. 514 (1988). With regard to future requests the county may receive, you must show which portions of a contract constitute trade secrets and submit the information for review if you wish to withhold it.

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 OR89-227.

Yours very truly,

*Open Government Section
of the Opinion Committee* 

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/bc

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