



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

February 6, 1990

Mr. David H. Thornberry
Member
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

Dear Mr. Thornberry:

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# 5721; this decision is OR90-045.

The State Board of Insurance (SBI) received several open records requests for information pertaining to a bid for proposals for a management study of SBI's financial oversight and regulation and early warning system. The requests for information encompass the proposals submitted to SBI, the criteria SBI used to evaluate the proposals, and the SBI staff analyses of the proposals.

We have considered the exceptions you claimed, specifically sections 3(a)(4), 3(a)(10), and 3(a)(11), and reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 306 (1982), a copy of which is enclosed, resolves your request with regard to section 3(a)(4). Because SBI has awarded the consulting contract, none of the proposals may be withheld pursuant to this section.

Section 3(a)(10) of the act protects trade secrets and confidential commercial or financial information. Of the seven companies that submitted proposals to SBI, only Price Waterhouse contacted this office with regard to the applicability of section 3(a)(10) to the contents of its proposal. The letter from Price Waterhouse did not, however, explain why any portion of its proposal should be withheld pursuant to section 3(a)(10). Price Waterhouse has not carried its burden of proof in regard to this section. See Attorney General Opinion H-436 (1974) (bare claim that an exception applies with no explanation of why it applies will not

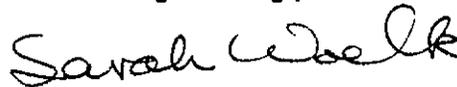
suffice). You must therefore release each proposal in its entirety.

Section 3(a)(11) of the act excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 464 (1987). Although the ratings of the proposals contained in the document entitled "Comparisons of Proposals Received" would normally come under the protection of section 3(a)(11) in their entirety, we note that portions of this document were freely discussed during public meetings by SBI staff and board members. To the extent that the ratings were revealed during those meetings, SBI has waived the protection of section 3(a)(11); the remaining ratings may, however, be withheld.

Neither the criteria that the evaluators used for rating the proposals, nor the relative significance of the criteria, nor the two memoranda submitted to this office consist of the type of information that comes under the protection of section 3(a)(11). See Open Records Decision No. 450 (1986). These must therefore be released.

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 OR90-045.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/RWP/le

Ref.: ID# 5721, 5787

Enclosures: Documents Sent
ORD-306

cc: Charles Davis
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