



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

February 7, 1990

Mr. Fernando C. Gomez  
General Counsel  
Texas State University System  
Board of Regents  
505 Sam Houston Building  
Austin, Texas 78701

Dear Mr. Gomez:

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# 7529; this decision is OR90-051.

Southwest Texas State University received an open records request from an unsuccessful bidder for information relating to a bid on the university's library furniture project. The requestor seeks copies of all bids submitted on the project, recommendations made by the University Learning Resource Center Director concerning awarding the contract, shop drawings of the furniture submitted by the winning low bidders, and copies of any correspondence about the samples the low bidders submitted.

The university seeks to withhold the requested information from required public disclosure under sections 3(a)(4), 3(a)(10) and 3(a)(11) of the Open Records Act.

Section 3(a)(4) of the Open Records Act protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 3(a)(4) does not except bids or proposals from disclosure once the bidding is over and the contract has been awarded, Open Records Decision Nos. 306 (1982); 184 (1978), or where no contract is awarded. Open Records Decision No. 201 (1978). Moreover, a general allegation or mere possibility that unspecified competitors might gain an advantage by disclosure will not invoke section 3(a)(4). Open Records Decision No. 463 (1987). Thus, in this instance, the shop drawings and correspondence concerning the samples submitted by the low bidders are not excepted from disclosure. They must be released.

Section 3(a)(10) of the Open Records Act excepts from required public disclosure:

trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

This section protects two categories of information: 1) trade secrets and 2) commercial or financial information. There is nothing in your request for a decision to indicate that the samples at issue fit in either of those categories. Consequently, the shop drawings at issue are not protected from public disclosure under section 3(a)(10).

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 entity's deliberative process. Open Records Decision No. 464 (1987); 239 (1980). The memo from the director of the learning resource center concerning the bids and his recommendations about awarding the contract for library furniture is precisely the kind of information protected by section 3(a)(11). All of the memo after the second paragraph may be deleted; the rest must be disclosed.

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 OR90-051.

Yours very truly,



David A. Newton  
Assistant Attorney General  
Opinion Committee

DAN/le

Ref.: ID# 7529, 7544

cc: Peter J. Harry  
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