



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

March 8, 1990

Mr. William M. Buechler
Henslee, Ryan & Groce
Attorneys for Graford I.S.D.
3432 Greystone Drive, Suite 200
Austin, Texas 78731

OR90-093

Dear Mr. Buechler:

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# 8472.

We have considered the exceptions you claimed, specifically sections 3(a)(3) and 3(a)(4), and have reviewed the documents at issue. Previous determinations of this office, copies of which are enclosed, resolve your request. For this reason, you must release the requested information.

To secure the protection of section 3(a)(3), a governmental body must first demonstrate to the attorney general that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Permitting the public to be denied access to information simply because of a remote chance of litigation, however, would undermine the policy of openness of the Open Records Act and the express mandate that the act be construed in favor of granting requests for information. Art. 6252-17a, § 14(d). Recognizing this, the attorney general will find that litigation is "reasonably anticipated" only if a governmental body furnishes specific evidence establishing that litigation involving a specific matter is realistically contemplated. Open Records Decision No. 331 (1982). In our opinion, you have not done so in this case.

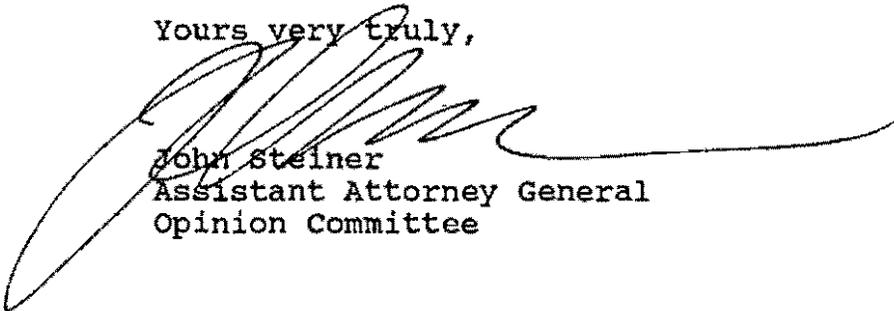
The primary purpose of section 3(a)(4) is to protect the government's purchasing interests by preventing a competitor or bidder from gaining an unfair advantage over other competitors or bidders. The test for determining whether section 3(a)(4) applies is whether there has been a showing of some specific, actual, or potential harm in a particular competitive situation. A general allegation or a

remote possibility that an unknown competitor might gain an advantage by disclosure is not sufficient to invoke section 3(a)(4). Open Records Decision No. 463 (1987).

Section 3(a)(4) is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. Bids may be withheld as long as negotiations are in progress regarding interpretation of bids, and as long as any bidder is free to furnish additional information. Open Records Decision No. 170 (1977). Section 3(a)(4) does not except bids from disclosure when the bidding is over and the contract has been awarded. Open Records Decision Nos. 306 (1982); 184 (1978). Section 3(a)(11) does not apply here.

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 OR90-093.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/le

Ref.: ID# 8472

Enclosure: Open Records Decision Nos. 463, 306, 184

cc: Mr. Robert S. Smith, Esq.
McGUIRE, WOODS, BATTLE & BOOTHE
The Army and Navy Club Building
1627 Eye Street N.W.
Washington, D.C. 20006