



THE ATTORNEY GENERAL
OF TEXAS

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ATTORNEY GENERAL

June 12, 1990

Ms. Sandra J. Bockelman
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR90-225

Dear Ms. Bockelman:

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# 9185.

The City of Austin has received a request for copies of "all memoranda and other hospital records pertaining to the hospital's contracts" with Critical Care, Inc. and Traveling Nurse Corps (hereinafter "TravCorps"). You ask whether portions of the proposals submitted to the city by each of these contractors are exempt from required public disclosure under sections 3(a)(1) and 3(a)(10) of the Open Records Act.

The city's request for proposals contains a clause by which an offerer can identify all proprietary information in the proposal that the offeror wishes to remain confidential. A governmental body cannot close information simply by entering into a contract provision that prohibits disclosure. Open Records Decision No. 514 (1988); Attorney General Opinion JM-672 (1987). Whether the requested information may be withheld depends on whether one of the Open Records Act exceptions protects the information from required disclosure. Id.

The City of Austin has adopted the arguments made by TravCorps and Critical Care, Inc. (CCI). We examine first the documents TravCorps has marked as those confidential pursuant to section 3(a)(10).

TravCorps had divided the information it considers confidential into six categories referenced as A-F: A: recruiting; B: retention; C: proprietary statistics; D: quality control procedures; E: operating procedures; F:

computer facilities. TravCorps asserts that the information within the proposal that is within one of these categories is commercial information.

Section 3(a)(10) of the Texas Open Records Act protects commercial information from disclosure if it meets the following test:

commercial or financial matter is 'confidential' for purposes of the exemption if disclosure of the information is likely to have either of the following effects: 1) to impair the Government's ability to obtain necessary information in the future; or 2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

Open Records Decision No. 494 (1988) (quoting National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974)).

TravCorps asserts that the information contained in each of the above categories relates to factors on which competition is based in the industry of traveling nurse services. We agree. We also agree with the assertion by the city that release of this information would impair the city's ability to secure future proposals. See Open Records Decision No. 306 (1982). Consequently, you may withhold the information in the proposals marked as confidential by TravCorps. See Open Records Decision Nos. 509 (1988); 319, 309 (1982).

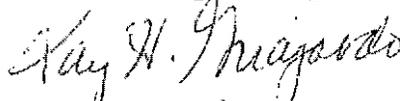
CCI objects to the release of its fee structure and the list of references included in its proposal. Applying the six factors for determining whether information is a trade secret adopted by the Texas courts in Hyde Corp. v. Huffines, 314 S.W.2d 763 (Tex.), cert. denied, 358 U.S. 898 (1958), CCI asserts that this information is a trade secret protected from disclosure by section 3(a)(10). Fee structures qualify as "trade secrets." See Open Records Decision No. 306 (1982). You may withhold the information CCI has marked that relates to its fee structure.

In a letter submitted to your office, the attorney for CCI has applied the six trade secret criteria to its list of references. His assertions convince us that the list of references contained in CCI's proposal are trade secrets which may be withheld from public disclosure under section 3(a)(10). See Open Records Decision No. 494 (1988). Those

portions of CCI's proposal that may be withheld are indicated on page 5 of its letter to you.

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 OR90-225.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref.: ID# 9185

Enclosure: Marked Documents

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