



Office of the Attorney General
State of Texas

July 13, 1993

DAN MORALES
ATTORNEY GENERAL

Ms. Rose-Michel Munguia
Legal Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR93-446

Dear Ms. Munguia:

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# 19340.

The General Services Commission (the "commission") has received a request for information relating to AT&T Communications ("AT&T") and Southwestern Bell Telephone Company. Specifically, the requestor seeks:

The contracts between the State and AT&T regarding the TEX-AN system.

The contracts between the State and Southwestern Bell regarding the TEX-AN system.

Any correspondence, memoranda or other documents relating to the contract with AT&T and Southwestern Bell or to the decision to enter into such contracts. In particular, we are interested in the decision to modify and extend the existing contract rather than to submit it to competitive bidding.

You have submitted to us for review a document titled "Network Management Center Performance Reports" created by AT&T. You claim that this document is excepted from required public disclosure by sections 3(a)(4) and 3(a)(10) of the Open Records Act. As you do not comment on the remainder of the requested information, we presume that it has been or will be made available to the requestor. *See* Open Records Decision No. 363 (1983).

We turn first to section 3(a)(4). Section 3(a)(4)^f excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in

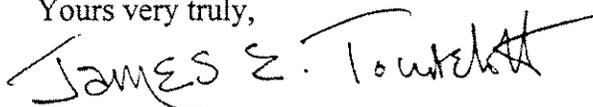
commercial transactions. Open Records Decision No. 541 (1990). Neither the commission nor the interested third party indicates how the requested information relates to a competitive bidding situation or to a commercial transaction to which the commission is party. Accordingly, the section 3(a)(4) exception may not be properly invoked.

Next, we turn to section 3(a)(10). Generally, section 3(a)(10) protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. *See generally* Open Records Decision Nos. 592 (1991); 552 (1990). Pursuant to section 7(c) of the act, we have notified the company whose interests may be affected by disclosure of the submitted document. We did not, however, receive a response.

When neither the agency nor the company provides relevant information regarding factors necessary to make a 3(a)(10) claim, the agency has no basis to withhold the information under section 3(a)(10). *See, e.g.*, Open Records Decision Nos. 405 (1983); 402 (1983). As the commission has provided us with no information supporting its assertion of the section 3(a)(10) exception, we have no basis on which to conclude that the submitted document constitutes a trade secret. Furthermore, we are unaware of any federal or Texas statutes that make confidential any of the information contained in the document. Accordingly, section 3(a)(10) of the Open Records Act does not authorize the commission to withhold from required public disclosure the submitted document; the commission must release the requested information in its entirety.

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 contact this office.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Open Government Section

JET/GCK/jmn

Ref.: ID# 19340
ID# 19607

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