



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1994

Mr. Frederick J. McCutchon
Children's Heart Institute of Texas
P.O. Box 3966
Corpus Christi, Texas 78463

OR94-461

Dear Mr. McCutchon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.)¹. Your request was assigned ID# 22772.

The Children's Heart Institute of Texas (the "institute") received a request for a copy of a contract awarded by the institute. The requestor asserted that the institute is a governmental entity subject to the Open Records Act and asked for a copy of the contract between the institute and Dr. Roberto L. Villarreal. You sought an open records decision from this office concerning that request. In correspondence between Dr. Villarreal and the institute, a copy of which was sent to this office, Dr. Villarreal questions whether the institute "has any obligation under the Texas Open Records Act." Your letter to this office states that the request may fall within a previously published Open Records Decision. However, no information has been provided this office by the institute or Dr. Villarreal that would indicate that the institute is not a governmental entity subject to the act. Gov't Code §§ 552.003 (definition of "governmental body"), .021 (definition of public information).

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

A copy of a contract between the institute and Dr. Villarreal's corporation was provided to this office for review. You asserted a third party interest in the contract pursuant to section 552.305 of the act. According to correspondence submitted to this office, Dr. Villarreal stated that providing the requestor an "unabridged copy of the contract will provide our only competitor with an unfair business advantage." This is the only information that this office was provided concerning whether the contract at issue is subject to an exception from disclosure under the act. We assume that the institute and Dr. Villarreal are asserting that the contract is excepted from disclosure under section 552.110.

Section 552.110 provides an exception from disclosure for (1) commercial or financial information made privileged or confidential by statute or judicial decision and (2) trade secrets. This office must accept a claim that a document is excepted as a trade secret if a *prima facie* case for exception is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 592 (1991) at 2. However, this office has been provided no information to show that the contract contains trade secrets. Some of the information in the contract appears to be commercial or financial information. We are aware of no statutory law which would make this information confidential. We note that the information concerns Dr. Villarreal's corporation, and there is no protected common-law interest in financial information about a business. Open Records Decision No. 192 (1978) at 4. This contract is therefore not excepted from disclosure under section 552.110. Consequently, since there is no basis for this office to assume that the contract is not a public record, you must release the information at this time. If you have any questions regarding this letter, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/LRD/rho

Ref.: ID# 22772

Enclosures: Submitted documents

cc: Mr. Donald M. Feferman
P.O. Box 23041
Corpus Christi, Texas 78403-3041
(w/o enclosures)

Dr. Roberto L. Villarreal
3538 S. Alameda
Corpus Christi, Texas 78411
(w/o enclosures)