



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1994

Ms. Alesia L. Sanchez
Legal Assistant
Legal Services, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR94-587

Dear Ms. Sanchez:

The Texas Department of Insurance (the "department") has asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The request was assigned ID# 25298.

The department received a request for the winning proposal submitted in a competitive bidding situation and for information as to how the submitted proposals were scored or ranked.¹ The proposals were submitted in response to the department's request for proposal for a contractor to conduct licensing tests. The department submitted to this office as responsive to the request a copy of the winning proposal and a scoring sheet that shows the scores for proposals submitted to the department. You contend that the scoring sheet is excepted from disclosure under section 552.111 and part of the proposal is excepted from disclosure under section 552.110 of the Government Code. You also ask questions about the information in the proposal that has a trademark notice. We will address your arguments and questions.

Section 552.111 excepts from disclosure interagency or intraagency communications "consisting of advice, recommendations, opinions and other material reflecting the deliberative or policymaking processes of the governmental body." Open Records Decision No. 615 (1993) at 5. The scoring sheet shows the scores given each

¹The requestor also asked for information about how to appeal the department's award decision. Since you have not argued that the information is excepted from disclosure, we assume it was provided to the requestor.

proposal by the department's evaluation committee. According to information submitted by the department and the requestor, the total scores for each proposal were announced in a public meeting, along with the evaluation committee's recommendation based on those scores. The requestor indicates that the categories and scores for each category were also publicly disclosed. The department selected the contractor whose proposal received the highest score. To the extent that information on the scoring sheet was disclosed at the public meeting, that information may not now be withheld from disclosure under section 552.111. Gov't Code § 552.007; Attorney General Opinion JM-1143 (1990); Open Records Decision Nos. 221 (1979) at 1 ("official records of the public proceedings of a governmental body are among the most open of records"); 192 (1978) at 3 (governmental body may not make a selective disclosure of internal memoranda). Information on the scoring sheet that has not already been disclosed may be withheld under section 552.111 as it is opinion reflecting the department's deliberative or policymaking process.²

The winning proposal was submitted by Insurance Testing Corporation (the "corporation.") The department states that the corporation has "waived all restrictions" as to release of its proposal, except for one section of the proposal. The department contends that this part of the proposal may be protected from disclosure under section 552.110. Pursuant to section 552.305 of the Government Code, this office notified the corporation and solicited argument in support of the department's assertion that this information is excepted from public disclosure. We received no response from the corporation.

Section 552.110 excepts from required public disclosure (1) trade secrets and (2) commercial or financial information that is made confidential by statute or judicial decision. This exception from disclosure protects the property interests of third parties recognized by the courts. However, no information has been provided this office as to the applicability of section 552.110 to the section of the proposal at issue. The information at issue does not appear to contain commercial or financial information.³ Although this office will accept a claim that information is excepted from disclosure as a trade secret if a prima facie case is made that it is a trade secret and no argument is submitted that rebuts the claim as a matter of law, no such prima facie case has been

²You stated in your letter that "representative samples of the information which this agency considers to be exempt will be forwarded to your office." However, the entire proposal was sent to this office rather than a representative sample. Also, it appears that the scoring sheet, which was sent to this office, may be the only other document at issue. However, if the scoring sheet sent to this office is intended to be a representative sample of other records at issue, we assume that it is truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if records contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³Even if this section contains some commercial or financial information, we are aware of no statutory or judicial basis for excepting it from disclosure.

made by the corporation or the department. Open Records Decision Nos. 552 (1990); 402 (1983). The section of the proposal at issue is therefore not excepted from disclosure under section 552.110.

You have noted that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. See Open Records Decision No. 550 (1990).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/SG/rho

Ref: ID# 25298

Enclosures: Submitted documents

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