



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 29, 1994

Mr. Edward H. Perry  
Assistant City Attorney  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR94-853

Dear Mr. Perry:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 22886.

The City of Dallas (the "city") requested proposals for a "high technology procurement project." Project proposals were received from Lockheed IMS ("Lockheed"), Electronic Data Systems Corporation ("EDS"), and Grumman Systems Support Corporation ("Grumman"). The city subsequently awarded the contract to EDS. The city received a request from Lockheed for EDS' proposal and correspondence between the city and EDS.<sup>1</sup> The city received a separate open records request from EDS for the Lockheed and Grumman proposals and for correspondence between the city and those bidders.<sup>2</sup> You contend that the proposals and related correspondence are excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code.

Section 552.104 of the Government Code excepts "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in a commercial context by keeping some

---

<sup>1</sup>Lockheed originally sought information about both EDS and Grumman, but later modified its request to include only information concerning EDS.

<sup>2</sup>We note that Lockheed and EDS also asked for information about the city's evaluation of the responses and its evaluation criteria. Since you have not asserted that this information is excepted from disclosure, we assume that responsive information has been provided to the requestors.

competitors from gaining unfair advantage over other competitors. Open Records Decision No. 541 (1990) at 4. However, generally proposals and information related to those proposals is not excepted from disclosure under section 552.104 once the bidding process is over and a contract awarded. *Id.* at 5. Since the contract has already been awarded, the proposals and related correspondence may not be withheld from disclosure under section 552.104.

You have also asserted that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code, which provides an exception for "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that the proposals and related correspondence are made confidential by law under Section 252.049 of the Local Government Code, which states:

(a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.

(b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

The section 252.049 provisions for keeping proposals secret during the negotiation stage before the contract is awarded are not applicable in this situation because the contract has been awarded. Section 252.049 recognizes that trade secrets and information otherwise made confidential would not be disclosed to the public even after the contract is awarded.

Trade secrets are specifically addressed in section 552.110 of the Government Code, which 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 that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision No. 592 (1991) at 2. You contend that the proposals are made confidential by section 552.110. You also submitted to this office the proposals and correspondence at issue.<sup>3</sup> As provided by section 552.305 of the Government Code, this office provided the companies that submitted proposals the opportunity to submit reasons as to why the proposals and correspondence should be withheld from disclosure. This office received responses from EDS, Lockheed, and Grumman.

---

<sup>3</sup>We note that the city initially sent us a "representative sample" of the proposals. However, the city has since submitted the entire proposals from Grumman and Lockheed and the unreleased portions of the EDS proposal. We therefore do not need to discuss the "representative sample" that was previously submitted.

This office will accept a claim that information is excepted from disclosure under section 552.110 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. Open Records Decision No. 592 (1991). In *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert denied*, 358 U.S. 898 (1958), the Texas Supreme Court adopted the Restatement of Torts definition of a trade secret. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business . . . . [It may] relate[ ] to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939).

The following criteria determines if information constitutes a trade secret:

(1) the extent to which the information is known outside [the owner's business]; (2) the extent to which it is known by employees and others involved in [the owner's] business; (3) the extent of measures taken [by the owner] to guard the secrecy of the information; (4) the value of the information to [the owner] and to [its] competitors; (5) the amount of effort or money expended by [the owner] in developing the information; (6) the ease or difficulty with which the information could be property acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 522 (1989).

We will consider the proposals submitted by Grumman, Lockheed, and EDS. We note initially that EDS has already agreed to the release of certain portions of its proposal. The city indicates it has already released those portions of the EDS proposal to Lockheed.

Therefore the only proposal information we will consider for EDS is the information that has not previously been released.

Grumman submitted to this office a copy of a letter it sent to the city, stating that the company considered its entire proposal to be confidential. Grumman stated that it prepared the proposal for release to the city only, that it had spent "a great deal" of time and money on the information and that releasing the proposal would benefit competitors. The Grumman letter added that "[s]hould you require more specific support for this position please advise." This office had notified Grumman by letter that it had the burden of providing all relevant information to support its objection to release of the proposal:

If you wish to claim that any or all of this information is excepted from public disclosure, you must inform us which exceptions apply to it, identifying the specific part or parts of the records that are within the exceptions you raise, and explain why each exception is applicable. A claim that an exception applies without further explanation will not suffice.

If a company does not provide relevant information regarding applicability of the Restatement factors to the particular information it contends is confidential, this office has no basis for withholding that information as a trade secret. Open Records Decision No. 402 (1983). Since Grumman did not provide enough information to establish a prima facie case that any of the information in its proposal is excepted from disclosure, the proposal must be released.

EDS and Lockheed contend that employee resumes, biographical summaries, and descriptions are excepted from disclosure. Lockheed states that the "descriptions of key personnel capabilities, experience, accomplishments, and assignments" is highly personal, sensitive information. Lockheed also asserts that disclosing the information in its proposal concerning employees would expose its trade secrets. However, this argument is not sufficient to show that employee information constitutes trade secrets. *See id.*

Lockheed and EDS assert that their employee information is excepted from disclosure under section 552.104. EDS contends that employee information is excepted from disclosure for the following reason:

[O]ur staff are widely recognized as some of the best in the business and, as a result, competitors frequently approach our personnel in attempts to lure them from us. Identification of specific individuals, together with their titles and a description of their relevant experience, would provide competitors with a shopping list to assist them in their attempts to "raid" the EDS team, the result of which would be severely detrimental to both EDS and to the City of Dallas.

EDS also argues that disclosing the identity of its "teaming partners" would be an unfair advantage to its competitors under section 552.104. EDS states that "[t]he ability to locate and attract qualified, minority/women business enterprises is a highly competitive activity." Section 552.104 excepts "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a *governmental entity's* interests in relation to competition for a contract or benefit. Open Records Decision No. 592, at 8. The exception does not protect the interests of private parties such as Intracorp or Medical Management. *Id.* at 9. Therefore, information about Lockheed and EDS employees and about EDS' "teaming partners" is not protected from disclosure under section 552.104.

EDS and Lockheed assert a privacy interest in employee information. We note that EDS and Lockheed have no common-law privacy interests, since the right of privacy protects the feelings of human beings, not businesses. Open Records Decision No. 192 (1978) at 4. We will, however, consider whether their employees' common-law privacy interests are implicated by release of this information. The test to determine if information at issue is private and excepted from disclosure is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W. 2d 668, 685 (Tex. 1976, *cert denied*, U.S. 931 (1977)). The EDS proposal includes identification of employees, short descriptions of key employees' responsibilities under the proposal, biographical information, and resumes. The Lockheed proposal also has descriptions and resumes. None of the information in either of these proposals is highly intimate or embarrassing to a reasonable person. The Lockheed and EDS employee information therefore is not excepted from disclosure on the basis of common-law privacy.

EDS states that the other unreleased portions of its proposal contain closely held information that is disclosed only to EDS employees with a "need to know" status. To further protect the information, EDS has internal security procedures and non-disclosure agreements with its partner companies. As to cost information in the proposal, the company agrees that "the unitary, price-per-citation contained in the Cost Summary section of the Proposal may be subject to disclosure," but urges that the other cost and pricing information reflecting EDS "internal competitive bidding and risk tolerance strategies" not be disclosed.

We have reviewed the portions of the EDS proposal that are at issue. We agree that EDS has made a *prima facie* case that most of the information is protected as a trade secret. However, some of the information EDS marked as confidential is not a method or formula for pricing but rather consists of unit prices, cost estimates, and information about contract terms. This type of information is not a trade secret. Open Records Decision No. 541 (1990) at 7-14. We have marked the information for which EDS has made its *prima facie* case and which must be withheld from disclosure as trade secrets. The other information must be released.

Lockheed has identified the portions of its proposal that it contends are excepted from disclosure. We assume that the other sections of the proposal have already been released to the requestor, so we reviewed only the portions Lockheed argues are confidential. The company states it provides this information only to those employees who need to know specific information to work on certain projects. Lockheed states that its information was developed by experts and that the information would be difficult to duplicate because it was developed from non-public sources.

We have reviewed the portions of the Lockheed proposal that are at issue. We agree that Lockheed has made a prima facie case that most of the information is protected as a trade secret. As we have previously discussed, the summaries, resumes, and biographical descriptions of employees must be released. Also, some of the information Lockheed argues is confidential are cost estimates and contract terms that must be disclosed. Such is generally not protected as trade secrets. *Id.* We have marked the information that must be withheld from disclosure. The remaining information must be released.

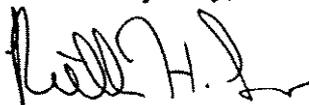
The city submitted to this office a "representative sample" of correspondence that you contend is confidential. We note that when representative documents are numerous and repetitive, a governmental body may submit representative samples, but if each record contains substantially different information, all of the documents must be submitted to this office for review. Open Records Decision Nos. 499, 497 (1988). We have reviewed the correspondence, which consists of three letters from the city, with attached questions for each bidder. Since the letters do not contain confidential information, we assume that you are concerned that the questions submitted to the bidders contains confidential information.

We note initially that the city did not make a prima facie case that the correspondence contains trade secrets. Of the three bidders, only EDS argued that some of the questions submitted to EDS by the city were confidential. We have already marked certain questions in the EDS proposal that must be withheld. For your convenience, we have marked the duplicative questions on the correspondence the city submitted. The other questions to EDS must be released. Since Lockheed did not argue that any of the city's questions to the company were confidential and Grumman did not make a prima facie argument that any of its information was protected as a trade secret, questions submitted to these bidders must also be released.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records.

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# 22886

Enclosures: Marked documents

cc: Mr. Richard M. Lannen  
Lannen & Oliver, P.C.  
Attorneys and Counselors  
3800 Bank One Center  
1717 Main Street  
Dallas, Texas 75201  
(w/o enclosures)

Mr. James P. Prigmore  
Senior Regional Vice President  
Southern Region  
Lockheed IMS  
1515 Poydras Street, Suite 1000  
New Orleans, Louisiana 70112  
(w/o enclosures)

Mr. Larry B. Sampson  
Counsel, State and Local Government  
EDS  
4800 Six Forks Road  
Raleigh, North Carolina 27609  
(w/o enclosures)

Mr. Douglas R. Hoffman  
Director, Business Operations  
Grumman Systems Support Corporation  
10 Orville Drive  
Bohemia, New York 11716  
(w/o enclosures)