



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 2, 1996

Ms. Lavergne Schwender
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR96-0478

Dear Ms. Schwender:

You ask 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# 38081.

Harris County (the "county") has received a request for the bids submitted to the county in response to a request for proposal ("RFP") to provide radiotherapy services for the county's Hospital District. The county has taken no position regarding whether the requested information is excepted from disclosure, but asks pursuant to section 552.305 of the Government Code for a decision from this office. You have submitted a copy of the requested information for our review.

As provided by section 552.305 of the Government Code, in a case in which a person's privacy or property interests may be involved, a governmental body may decline to release information for the purpose of requesting an attorney general decision. The governmental body may, but is not required to, submit reasons why the information should be withheld or released. Gov't Code § 552.305(c). In the case at hand, you noted that at least one of the entities that submitted information in response to the RFP objected to the release of certain portions of the requested information. You therefore requested an opinion from this office pursuant to section 552.305. This office notified the parties who submitted information in response to the RFP of this request, and requested that if they objected to the release of the requested information to provide this office with reasons why the information should be withheld. *See* Gov't Code § 552.305; Open Records Decision No. 542 (1990). One of the entities, Methodist Hospital, objected to disclosing its submission for the reasons discussed below.¹

¹The other entities that submitted information in response to the RFP did not respond to this office. Consequently, they have not established that the information that they submitted to the county is

Methodist Hospital asserts that its submission in response to the RFP is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 552.104 is designed to protect the interests of the governmental body as in a competitive bidding situation for a contract or benefit. Open Records Decision No. 592 (1991) at 8. It is not designed to protect the interests of private parties submitting information to a governmental body. *Id.* at 8-9. The county does not claim that any of the requested information is excepted from disclosure under section 552.104. Accordingly, the requested information is not excepted under section 552.104 of the Government Code.

Methodist Hospital also asserts that its submission is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 excepts from disclosure a "trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Section 552.110 is divided into two parts: (1) trade secrets and (2) commercial or financial information. Methodist Hospital does not argue that the requested information constitutes a trade secret, and has not provided this office with information to show as a matter of law that the requested information is a trade secret. *See* Open Records Decision No. 552 (1990). Thus, the requested information is not excepted under the trade secret prong of section 552.110.

To fall within the second part of section 552.110, the information must be made "confidential by a statute or judicial decision." Open Records Decision No. 592 (1991) at 6. Methodist Hospital argues that the information at issue is made confidential by article 1396-2.23A(c), V.T.C.S., which provides that the records, books, and annual reports of a non-profit corporation shall be available to the public for inspection and copying at the principal office of the non-profit corporation during regular business hours. Rather than making confidential the information submitted to the county by Methodist Hospital or otherwise limiting access to this information, article 1396-2.23A(c) specifically makes this information available to the public. Thus, the county must release this information.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

(Footnote continued)

excepted from disclosure, and this information must be released. *See* Open Records Decision No. 402 (1983).

²In Open Records Decision No. 639 (1996) the Attorney General held that the case of *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), which interprets exemption four of the federal Freedom of Information Act, was a "judicial decision" for purposes of section 552.110. Neither the county nor Methodist Hospital argue or provide information to show that the requested information is made confidential under the test established in *National Parks & Conservation Ass'n*. Therefore, the requested information may not be withheld under this standard.

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/ch

Ref.: ID# 38081

Enclosures: Submitted documents

cc: Mr. Todd D. Stevens
Division of Radiotherapy - 97
The University of Texas MD Anderson Cancer Center
1515 Holcombe Boulevard
Houston, Texas 77030
(w/o enclosures)

Mr. J. Richard Cheney
General Counsel
Methodist Hospital
6565 Fannin, M.S. D-200
Houston, Texas 77030-2707
(w/o enclosures)

Mr. Michael J. Best
Chief Financial Officer
The University of Texas MD Anderson Cancer Center
1515 Holcombe Boulevard
Houston, Texas 77030
(w/o enclosures)

Mr. Thomas Graves
Memorial Hospital System
7737 Southwest Freeway
Houston, Texas 77074
(w/o enclosures)