



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 3, 1996

Mr. John Schwartz
Ruden, McClosky, Smith, Schuster and
Russell, P.A.
701 Brickell Avenue, Suite 1900
Miami, Florida 33131

OR96-0657

Dear Mr. Schwartz:

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# 39738.

The Amarillo Hospital District (the "district") received a request for "[b]id proposals filed by companies interested in a lease or purchase of Northwest Texas Healthcare Systems." You contend that these proposals are excepted from disclosure under sections 552.104, 552.105, and 552.110 of the Government Code. You also contend that release of the proposals would implicate privacy or property interests of the companies that submitted the proposals.

We note initially that there is no protected common-law privacy interest in commercial or financial information about a business. Open Records Decision No. 192 (1978) at 4 (right of privacy protects feelings of human beings, not property, business, or other monetary interests). Section 552.110 excepts from 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. This office will accept a claim that information is excepted from disclosure under the trade secret aspect of section 552.110 if a prima facie case is made that the information is a trade secret and no argument is submitted that rebuts that claim as a matter of law. Open Records Decision No. 552 (1990) at 5; *see* Open Records Decision No. 542 (1990) (governmental body may rely on third party to show why information is excepted from disclosure). Section 552.110 also protects commercial or financial information when a company shows that release of the information would cause substantial competitive harm. Open Records Decision No. 639 (1996).

This office sent letters to the companies you identified as having submitted proposals, informing these companies of their responsibility to identify exceptions that applied to their information and to explain why the exceptions applied. However, we received no responses. Section 552.110 is thus not applicable to the information at issue. *See* Open Records Decision No. 363 (1983) (third party duty to establish how and why exception protects particular information).

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 body's interests in a commercial context by keeping some competitors or bidders from gaining unfair advantage over other competitors or bidders. Open Records Decision No. 541 (1990) at 4. However, generally neither the contract nor proposal information submitted with the bid is excepted under section 552.104 once the bidding process is over and a contract awarded. *Id.* at 5.

You state that the district has awarded a purchase agreement contract to Universal Health Services, Inc. ("UHS"). You explain that this agreement is not final, however.

If the City Commission votes against the sale of [Northwest Texas Healthcare Systems] the Parties may not proceed with the sale. In that event, the [district] may begin negotiations with one of the other Bidders. The [district] remains in the process of negotiating with UHS the Outstanding Issues with respect to the sale of the assets

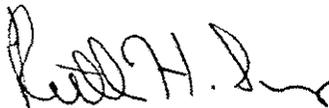
In this situation, it appears that release of the proposals before the contract has been finally approved could damage the district's ability to obtain negotiate favorable contract terms. Under these circumstances, the district may withhold the proposals from disclosure pursuant to section 552.104.

Since section 552.105 provides no broader protection for the proposals than section 552.104, we need not address your section 552.105 argument. We note, however, the applicability of section 552.105 ends once a transaction is completed. Open Records Decision No. 310 (1982) at 2. Also, since both section 552.104 and section 552.105 protect the governmental body's interests rather than that of a third party, the governmental body may waive the protection of either section if they wish to release the information at issue. *See* Open Records Decision No. 592 (1991).

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 under the facts presented to us in this request and should not be relied upon as a previous determination under 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 Records Division

RHS/rho

Ref.: ID# 39738

Enclosures: Submitted documents

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