



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 14, 1996

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

OR96-0954

Dear Ms. Schwender:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39964.

Harris County received a request for copies of "all proposals submitted in response to RFP Job 95/0542, referenced as Request for Proposal: IV Pumps, Sets and Solutions for the Harris County Hospital District. Excluded from this request are proposals submitted by Baxter." You inform us that of the eleven companies that submitted proposals, only three identified portions of the submitted proposals as confidential, Baxter Healthcare Corporation ("Baxter"), Amtec Medical, Inc. ("Amtec"), and Abbott Laboratories, Hospital Products ("Abbott"). As the requestor has stated, she does not seek Baxter's proposal. You state that the county has released those portions of the proposals that were not marked as confidential. Thus, the question is whether the portions of the proposals of Amtec and Abbott that were marked as confidential when submitted to the county are excepted from required public disclosure.

You state that the county awarded the contract to Abbott and raise section 262.030(c) of the Local Government Code, which provides as follows:

If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

Although neither the county nor the companies raises section 552.110 of the Government Code, we note that this provision also permits a governmental body to withhold from required public disclosure “[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.”<sup>1</sup> We must determine whether the information is a trade secret or confidential information.

In situations in which the release of requested information implicates a third party’s privacy or property interest, a governmental body may rely on the third party to establish that the information should be withheld under applicable exceptions intended to protect those interest. Gov’t Code § 552.305, Open Records Decision No. 575 (1990). On April 12, 1996, this office invited representatives of Amtec and Abbott to explain why portions of their proposals may be excepted from required public disclosure. We stated to those parties that “[i]f you do not provide the required information [explaining the applicability of an exception to public disclosure] within 14 days of receipt of this letter, we will assume that you have no privacy or property interest in the [requested] documents.” Neither Amtec nor Abbott has responded to this invitation. You have provided no information to substantiate the companies’ marking of the information as confidential. We do not believe that merely marking information as confidential when it is submitted to a governmental body can serve to make that information confidential and excepted from required public disclosure under the Open Records Act. *See Open Records Decision No. 575 (1990)*. Thus, notwithstanding the fact that these companies marked as confidential portions of their proposals submitted to the county, we have no basis to conclude that the county may withhold the information.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>See Open Records Decision Nos. 639 (1996) (discussing burden to establish that requested information is “commercial or financial information obtained from person and privileged or confidential by statute or judicial decision”), 554 (1990) (discussing burden to establish that requested information is a “trade secret”).

Ref.: ID# 39964

Enclosures: Submitted documents

cc: Ms. Karen L. Fannin  
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