



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1996

Mr. John T. Richards
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR96-1139

Dear Mr. Richards:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100175.

The Texas Department of Health (the "department") received two requests for information seeking the proposals submitted by consulting service companies in regard to a state Medicaid program contract. You contend that the requested information is excepted from required public disclosure by sections 552.104 and 552.110 of the Government Code. You have submitted the requested information to this office for our review.

Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

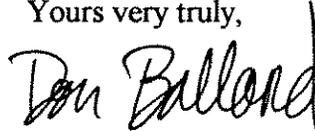
The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 (1990) at 4, 520 (1989) at 4. As the exception was developed to

protect a governmental body's interests, that body may waive section 552.104. *See* Open Records Decision No. 592 (1991) at 8.

In this instance, you state that the department is conducting a competitive bidding process to purchase the consulting services for a state Medicaid program. The proposals at issue here were submitted as a part of this process. You explain that no contract has been awarded at this time. You have demonstrated potential specific harm to the competitive situation here. We conclude, therefore, that you may withhold the requested information from disclosure under section 552.104¹.

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

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 100175

Enclosures: Submitted documents

cc: Ms. Diana M. Doering
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¹ Because we are able to make a determination under section 552.104, we do not address your other stated exceptions.