



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 6, 1996

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR96-1613

Dear Mr. Peck:

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#100507.

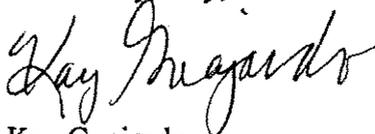
The Texas Department of Criminal Justice (the "department") received a request for "a copy of the 1995 RFP's submitted for competition by the Department of Criminal Justice for the private operation and management of its facilities in Kyle, Cleveland and Bridgeport, Texas, respectively, and copies of the winning written responses, including cost data attachments, and final contracts agreements." You inform us that the department will provide some of the requested information. However, the department asserts that the proposal of Corrections Corporation of America ("CCA") is excepted from required public disclosure based on section 552.104 and 552.110 of the Government Code.

Since the property rights of CCA are implicated by the release of the requested information here, this office notified CCA of this request. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). CCA asserts that certain information in its proposal is excepted from required public disclosure based on sections 552.104, 552.108 and 552.110 of the Government Code.

Section 552.110 excepts from disclosure two categories of information: (1) “[a] trade secret” and (2) “commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.” When applying the “commercial or financial information” branch of section 552.110, this office now follows the test for applying the *correlative exemption in the Freedom of Information Act*, 5 U.S.C. § 552(b)(4). *See Open Records Decision No. 639 (1996)*. That test states that commercial or financial information is confidential if disclosure of the information is likely either (1) to impair the government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *See National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). We believe CCA has established that the following information is subject to section 552.110 as commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision: its operating cost breakdown, its “Corporate and Facility Policies and Procedures,” its “Operational Plan,” employee salaries, employee leave benefits, and its self monitoring plan. Accordingly, the department must withhold that information from public disclosure.¹

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

KHG/rho

Ref.: ID# 100507

Enclosures: Submitted documents

cc: Mr. David E. Seamon, Sr.
Director
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P.O. Box 23829
Columbia, South Carolina 29224-3829

¹Having determined that the department may withhold the information at issue based on section 552.110, we need not address at this time the other exceptions raised by the department and CCA.