



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1996

Mr. Mark A. Walker
Attorney
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767

OR96-1919

Dear Mr. Walker:

On behalf of Analysts International Corporation ("AIC"), you ask us to reconsider Open Records Letter No. 96-1394 (1996). Your request for reconsideration was assigned ID# 101617.

The Lower Colorado River Authority (the "LCRA") received a request for "copies of all the submissions to LCRA for Contract Programming Services IAW with the Dec 1995 request for proposals due to Diane Chase Jan 2, 1996." You claimed, in part, that the requested information is excepted from disclosure under section 552.110 of the Government Code.

Pursuant to section 552.305 of the Government Code, we notified the third parties whose proprietary interests are implicated by the request of their opportunity to submit written comments explaining why the requested information should be excepted from disclosure. AIC, as well as two other third parties, responded by claiming that their information is excepted from disclosure under section 552.110.

In Open Records Letter No. 96-1394 (1996), we concluded that the LCRA must withhold the rates on Schedule 1 of AIC's bid under the commercial or financial information prong of section 552.110 and must release the remainder of AIC's materials. AIC has submitted additional arguments to this office and you now ask us to reconsider whether section 552.110 excepts Schedules 1 and 2 of AIC's bid from disclosure in their entirety.¹

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information

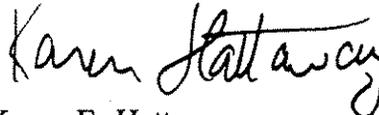
¹AIC has again invoked section 552.104 of the Government Code for Schedules 1 and 2 of its bid. We reaffirm our conclusion in Open Records Letter No. 96-1394 (1996) that section 552.104 does not except AIC's bid from disclosure.

obtained from a person and privileged or confidential by statute or judicial decision. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770. "To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure." *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert. denied*, 471 U.S. 1137 (1985) (footnotes omitted).

AIC has now demonstrated that the information in Schedules 1 and 2 of its bid is commercial or financial information the release of which would cause it to suffer substantial competitive harm. Thus, we conclude that the LCRA must withhold Schedules 1 and 2 of AIC's bid from disclosure under section 552.110.

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101617

Enclosures: Submitted documents

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