



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 26, 1996

Ms. B.J. "Beni" Hemmeline  
Civil Chief  
Office of the Criminal District Attorney  
P.O. Box 10536  
Lubbock, Texas 79408-3536

OR96-2232

Dear Ms. Hemmeline:

You seek reconsideration of Open Records Letter No. 96-0856 (1996), in which this office determined that certain requested information was not protected from disclosure under section 552.110 of the Government Code. We have assigned your request for reconsideration ID# 102058.

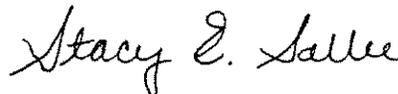
We have examined your request for reconsideration. Section 552.110 excepts from disclosure trade secrets or commercial or financial information obtained from a person and confidential by statute or judicial decision. In Open Records Decision No. 639 (1996), this office established that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act in 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. Lubbock County (the "county") argues that disclosure of the requested information will impair its ability to obtain the requested information in the future. However, in situations such as these, where the information was submitted in response to a request for proposals, federal courts have rejected similar arguments of impairment. *See, e.g., Bangor Hydro-Elec. Co. v. United States Dep't of the Interior*, No. 94-0173-B, slip op. at 9 (D. Me. Apr. 18, 1995) (no impairment because "it is in the [submitter's] best interest to continue to supply as much information as possible" in order to secure better usage charges for its lands); *Racal-Milgo Gov't Sys. v. SBA*, 559 F. Supp. 4, 6 (D.D.C. 1981) (no impairment because "[i]t is unlikely that companies will stop competing for Government contracts if the prices contracted for are disclosed").

The county has also claimed that section 262.030 of the Local Government Code excepts the requested information from disclosure. Section 262.030 of the Local Government Code authorizes counties to use an alternative competitive bidding procedure for obtaining insurance and high technology items. Section 262.030(b) provides, in pertinent part, as follows:

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.* [Emphasis added.]

This section makes specifically public all information in these types of proposals except for information that is a trade secret or is otherwise confidential by law. Thus, section 262.030 is essentially coextensive with section 552.110 of the Government Code and does not provide any exception to disclosure over and above that provided by section 552.110 of the Government Code. Therefore, we decline to reconsider our ruling in Open Records Letter No. 96-0856 (1996). If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 102058

Enclosures: Submitted documents

cc: Mr. Rick Holder  
6502 Slide Road, Suite 300  
Lubbock, Texas 79424  
(w/o enclosures)