



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1997

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR97-0074

Dear Ms. Rodriguez:

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# 103130.

The Texas Department of Insurance (the "department") received a request for information pertaining to the Request for Proposals for Examination Services for Quality of Care Examinations of Health Maintenance Organizations ("HMO's") issued September 4, 1996 (the "RFP"). You state that the department will release portions of the requested information. You assert that portions of the requested information are excepted from required public disclosure based on sections 552.104, 552.107(1) and 552.111 of the Government Code.

Section 552.104 states that:

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, usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision

No. 463 (1987). Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

You raise section 552.104 for the responses the department received for the RFP and for Attachment No. 1 to the October 14, 1996, correspondence to selected pool members. The representative sample of Attachment 1 you submitted to this office contains the name and enrollment of HMO's proposed for standard examination service. With regard to Attachment No. 1, you state, "if released, this would reveal the subject companies of future examinations and thus impair [the department's] ability to monitor and regulate these HMO's." You inform us that Attachment No. 1 "has been provided to selected pool members solely for the purpose of providing specific cost and pricing information to TDI, as well as identifying potential conflicts of interest. It is information with respect to which confidentiality is expected and required of pool members."

We conclude that based on section 552.104, the department may withhold from public disclosure the responses it received to the RFP until such time as the contract is awarded. However, as you have not demonstrated that its release would harm the department's interests in the selection process here, we conclude that section 552.104 is not applicable to Attachment No. 1 to the October 14, 1996, correspondence to selected pool members.

You have submitted representative samples of information you assert is excepted from disclosure under Government Code sections 552.107(1) and 552.111. Section 552.107(1) applies to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). Section 552.111 applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* We agree that these exceptions apply to portions of the submitted information and have marked the documents accordingly.¹

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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# 103130

Enclosures: Marked documents

cc: Ms. Jo Ann Howard
Jo Ann Howard & Associates, P.C.
P.O. Box 162198
Austin, Texas 78716-2198
(w/o enclosures)