



Office of the Attorney General

State of Texas

April 15, 1997

DAN MORALES
ATTORNEY GENERAL

Mr. W. Daniel Vaughn
McLeod, Alexander, Powel & Apffel
P.O. Box 629
Galveston, Texas 77553

OR97-0817

Dear Mr. Vaughn:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 105237.

The Galveston Wharves (the "wharves"), which you represent, received an open records request for, among other things, the current lease proposal for Pier 10 from the Port of Houston Authority. You first contend the requested information is exempted from required public disclosure under section 552.104 of the Government Code.

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the government's interests when it is involved in commercial transactions. For example, section 552.104 is generally invoked to exempt information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). In these situations, the exception protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the award of a contract.

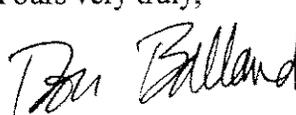
The purpose of section 552.104 is to prevent one competitor or bidder from gaining an unfair advantage over others. Open Records Decision No. 541 (1990). Where there is only one entity seeking a contract, there are no "competitors" for purposes of section 552.104. Open Records Decision No. 331 (1982). Based on the information before us, it appears that the only proposal your client is considering is that of the Port of Houston Authority. We therefore conclude that you have not met your burden in demonstrating that in this instance there is an ongoing competitive situation to which the information at issue relates. Consequently, section 552.104 does not apply to the requested information. *See also* Open Records Decision No. 441 (1986) (general allegation that some unknown competitor might gain some unspecified advantage by disclosure not sufficient to invoke section 552.104).

You also contend that one memorandum and its attachments are excepted from public disclosure under section 552.111 of the Government Code. Section 552.111 excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.). Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 (1993) at 5.

After reviewing the January 20, 1997 memorandum and its attachments, we conclude that, contrary to your assertions, the information in these documents does not reflect the internal deliberations within the wharves, but merely consists of factual recitations of the negotiations between the wharves and the Port of Houston Authority concerning the details of the proposed lease. This is not the type of information section 552.111 was intended to protect. Accordingly, the wharves may not withhold any portion of the requested information pursuant to section 552.111 of the Government Code.

Because you have raised no applicable exception to required public disclosure, we conclude that the wharves must release the requested information in its entirety. 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/RWP/ch

Ref.: ID# 105237

Enclosures: Submitted documents

cc: Mr. E.L. O'Rourke
1128 Post Office Street
Galveston, Texas 77550
(w/o enclosures)