



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 23, 1997

Mr. Mario Lewis
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1220 Montana Avenue
El Paso, Texas 79902

OR97-2126

Dear Mr. Lewis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 108987.

The Region 19 Education Service Center (the "center") received a request for the "complete copies of all 1997 Bank Depository Bid Proposals submitted by all financial institutions." You contend that portions of the proposal submitted by Texas Commerce Bank are protected from disclosure by sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue. We presume that you have released all other responsive information.

Since the property and privacy rights of a third party may be implicated by the release of the requested information here, this office notified Texas Commerce Bank (the "bank") about the 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). Texas Commerce Bank did not respond to our notification. The center, however, raises sections 552.104 and section 552.110 on behalf of the bank. The center has also submitted a letter where the bank claims that its pricing information is confidential and proprietary information. The bank states that "[w]e believe this information should not be disclosed to any third parties under the Open Records Act or otherwise because, if released, pricing information would give advantage to competitors and other bidders. As such, section 552.104 of the Government Code excepts this information from the general disclosure requirements of the Open Records Act."

Section 552.104 of the Government Code states:

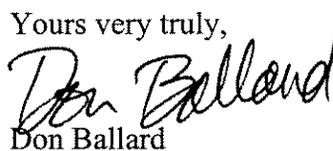
Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 (1990) at 4, 520 (1989) at 4. A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 (1987) at 2. Furthermore, section 552.104 is inapplicable when the bidding on a contract has been completed and the contract is in effect. *E.g.*, Open Records Decision No. 541 (1990) at 5, 514 (1988) at 2, 319 (1982) at 3. In this instance, the center has not demonstrated a potential specific harm to its interests in a particular competitive situation. Section 552.104 does not except the requested information from required public disclosure.

Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Both the center and the bank, however, make generalized, conclusory assertions that the requested pricing information is excepted from disclosure. We do not believe that either has established that the pricing information is protected trade secret or confidential commercial or financial information. *See* Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party 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), 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 542 (1990) at 3. The requested information, must therefore, be released to the requestor.

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/ch

Ref: ID# 108987

Enclosures: Submitted documents

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