



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 1, 1997

Ms. Jeanne Wierzbicki
Secretary
County of Falls
Rural Fire Prevention District #1
P.O. Box 172
Marlin, Texas 76661

OR97-2623

Dear Ms. Wierzbicki:

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# 110583.

The Rural Fire Prevention District #1 (the "district") received an open records request for the following information:

1. All documents reflecting any financial information (such as assets, liabilities, income, expenditures, etc.) about Falls County EMS, Inc.; and
2. All documents reflecting any agreements between Rural Fire Prevention District #1 and Falls County EMS, Inc. and/or Jim Lyons.

In your letter to this office requesting an open records decision, you contended that the requested information is excepted from required public disclosure pursuant to sections 552.104 and 552.110 of the Government Code.¹ You did not, however, submit to our office at that time an explanation as to why you believe these exceptions apply to the records at issue. *See* Gov't Code § 552.301(b).

¹You did not submit to this office for review any documents "reflecting any agreements between Rural Fire Prevention District #1 and Falls County EMS, Inc. and/or Jim Lyons." Because you have not specifically argued that these documents are excepted from required public disclosure, we assume the district has released these documents to the requestor to the extent that they exist. If it has not, these documents must be released at this time. *See* Gov't Code § 552.302.

Pursuant to section 552.303(c) of the Government Code, on October 6, 1997, our office notified you by letter sent via facsimile that you had failed to submit information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e), failure to comply would result in the legal presumption that the requested information is public information.

On October 7, 1997, you responded to our section 552.303(c) request with the following information:

Falls Co. EMS feels that their competitors would have an unfair advantage in bidding for EMS contracts if this information were to be released to the public. [The requested information] was received by the fire district in an open meeting and discussed in an open meeting.

We note at the outset that the district has not provided this office with any argument *on its own behalf* as to why the requested information should be withheld from the public. Section 552.104 generally was not intended to protect business entities that are in competition in the private sector. The primary purpose of section 552.104 is to protect the government's purchasing interests by preventing a competitor or bidder from gaining an unfair advantage over other competitors or bidders. Because you have not established that the requested information pertains to a pending competition for a government contract, we conclude that the district has not met its burden of demonstrating the applicability of section 552.104.

As noted above, you also raised section 552.110 of the Government Code, which exempts from required public disclosure

[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

This section protects two categories of information: 1) trade secrets and 2) commercial or financial information. Although your response to our section 552.303(c) notice to the district indicated that the Falls County EMS, Inc. believed that it might have a proprietary interest in the information at issue, the basis for this belief was not provided to this office. Consequently, this office notified representatives of Falls County EMS, Inc. pursuant to section 552.305 of the Government Code that we received your request for an open records decision and requested an explanation as to why the information at issue should be withheld from the public, with the caveat that their failure to provide such an explanation within the fourteen days required by section 552.305 would result in this office instructing you to disclose the information.

More than fourteen days have elapsed since our section 552.305 notice, but Falls County EMS, Inc. has failed to provide this office with any explanation as to why the requested information should not be released. Consequently, we have no basis for applying any exceptions to required public disclosure to this information. *See* Open Records Decision No. 552 (1990). Accordingly, the district must release the requested information at this time.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/rho

Ref.: ID# 110583

Enclosures: Submitted documents

cc: Falls County EMS, Inc.
P.O. Box 939
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(w/o enclosures)

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