



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 10, 1998

Mr. Michael G. Young  
Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR98-0405

Dear Mr. Young:

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# 112524.

The Texas Department of Health (the "department") received several requests for proposals pertaining to the department's medical transportation services contracting process. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You have submitted a representative sample of the requested information for our review.<sup>1</sup>

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 (1991) at 2. The department has informed this office by telephone that the bidding process is completed and a contract has been awarded and executed. Therefore, the department may not withhold the requested information from required public disclosure under section 552.104. *See* Open Records Decision No. 541 (1990) at 5.

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<sup>1</sup>In 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). 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.

The Office of the Attorney General will raise section 552.110 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Because the property and privacy rights of third parties may be implicated by the release of some of the requested information, this office notified East Texas Support Services, Inc. and Judi's Carrier (the "companies") of this request and of their opportunity to claim that the information at issue is excepted from disclosure. *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). The companies did not respond to our notice.

Section 552.110 protects the property and privacy interests of third parties by excepting from required public 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. In this instance neither the department nor the companies have demonstrated that the requested information constitutes information protected by section 552.110. 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 a prima facie case that information is trade secret). Therefore, the department may not withhold the information under section 552.110.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/alg

Ref.: ID# 112524

Enclosures: Submitted documents

cc: Mr. John W. Ferguson, Jr.  
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