



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

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Mr. Ryan Tredway
Staff Attorney
Legal and Compliance Division, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR98-0788

Dear Mr. Tredway:

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# 114246.

The Texas Department of Insurance (the "department") received two requests for information concerning its Request for Proposal No. RBD-97-002, including the proposals of both companies that submitted information, Assessment Systems, Inc. ("ASI") and Insurance Testing Corporation ("ITC"). One of the requestors also seeks certain scores of the evaluation committee members who scored the proposals based on certain criteria. You assert that the proposals are excepted from required public disclosure based on section 552.104 of the Government Code until such time as the contract is awarded and signed. You assert that the requested committee member scores are excepted from required public disclosure based on section 552.111 of the Government Code. Because the release of the requested information may implicate the privacy and proprietary rights of ASI and ITC, the department also asks for a determination under section 552.305 of the Government Code.

Section 552.104 states that "[i]nformation is excepted from [required public disclosure] 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 inform us that the Commissioner of Insurance selected ITC's proposal as the winning proposal and that the department is in the process of negotiating the contract. In your February 3, 1998 letter to this office, you state that the department anticipates that the contract will be awarded and signed by March 15, 1998. In light of this statement, we assume that the contract has been signed by both parties, making section 552.104 inapplicable. However, if the contract has not been signed, the department may withhold the proposals from the requestors based on section 552.104 until such time as the contract has been signed by both parties.

We turn to the scores. You state that the committee members' scores were not revealed at the public hearing on January 15, 1998. Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception 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). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.*

We have reviewed the information. We conclude that the department may withhold from required public disclosure the individual committee members' scores and notes based on section 552.111.

Since the property or privacy rights of the two companies may be implicated by the release of the requested information here, this office notified those companies of this 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). ITC did not respond to our notification. ASI responded to our notification and states that ASI is willing to allow disclosure to ITC of its proposal to the same extent that disclosure of ITC's proposal is allowed. We believe that neither ASI or ITC has established a privacy or property interest in the requested information. *See* Gov't Code § 552.110 (excepting from public disclosure certain proprietary information). Therefore, the department may not withhold the requested information in order to protect the companies' property or privacy rights.

Finally, we note that if requested records are copyrighted, they may be open for public inspection, but a governmental body is not required to furnish the requestor with copies of such records. The requestor assumes the duty of complying with the federal copyright law. *See* Open Records Decision No. 550 (1990) at 9.

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 Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 114246

Enclosures: Submitted documents

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