



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 8, 1998

Ms. Belinda Perkins  
Assistant General Counsel  
Teacher Retirement System of Texas  
100 Red River Street  
Austin, Texas 78701-2698

OR98-0922

Dear Ms. Perkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114256.

The Teacher Retirement System (TRS) received a request for "the list of bidders and bid price information" concerning "Service Bureaus Imaging of TRS Micro-fiche Records." You claim that the requested records are protected from required public disclosure by section 552.104. You also indicate that the information may be protected as confidential proprietary information under section 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

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. As the exception was developed to protect a governmental body's interests, that body may waive section 552.104. *See* Open Records Decision No. 592 (1991) at 8.

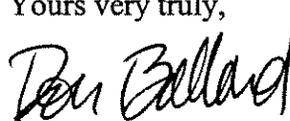
In this instance, you explain that the bidding process for TRS micro-fiche imaging is still competitive. You explain that the current TRS bidding process is being conducted pursuant to section 2157.063 of the Government Code. You inform this office that the deadline for submitting bids has passed, but "no contract has yet been awarded, and the TRS Board of Trustees has not yet considered the matter." You state:

TRS staff members are currently engaged in the process of reviewing the details of the offers, which are somewhat complex. In addition, TRS staff members are conducting negotiations with offerers, [sic] and seeking to clarify any ambiguities regarding definitions, the types and methods of providing services and/or equipment, and the offerors' ability to meet the solicitation requirements.

We have previously held that so long as negotiations are in progress regarding the interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to the proposed contract, bidding should be deemed competitive and therefore, information relevant thereto may be withheld under section 552.104 prior to the award of the contract. Attorney General Opinion MW-591 (1982); Open Records Decision No. 170 (1977); *see* Open Records Decision No. 541 (1990). You may withhold the requested information under section 552.104 until the contract is executed.

Because we make a determination under section 552.104, we do address your additional argument against disclosure at this time. If you receive a subsequent for this information, you should reassert your arguments against disclosure at that time. Gov't Code § 552.110; Gov't Code § 552.352 (distribution of confidential information is a criminal offense). 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# 114256

Enclosures: Submitted documents