



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 5, 1998

Ms. Betty DeLargy
Long, Burner, Parks & Sealy
P.O. Box 2212
Austin, Texas 78768-2212

OR98-1132

Dear Ms. DeLargy

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# 114425.

The Texas Department of Insurance (the "department") received an open records request to inspect and copy the proposal the EPOCH Group, L.C.(EPOCH) submitted in response to Request for Proposal HIRP97-002. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.104 and 552.110 of the Government Code.

Consequently, we notified representatives of EPOCH that we received your request for an open records decision regarding their proposal. *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 Nos. 575 (1990), 542 (1990) (determining that statutory predecessor to section 552.305 of Government Code permits governmental body to rely on interested third party to raise and explain applicability of exception to required public disclosure in certain circumstances).

The department states that at the time of the request, the requested information is exempt from public disclosure because the contract has not been finalized, approved, or signed, and therefore, not in effect. You also state that although one of the proposals has been selected as the winning proposal, the contract is still under negotiation. You further point out that the release of any of the proposals at this point would jeopardize the Risk Pool's purchasing interest in this competitive situation. You contend that the requested proposals may be withheld from disclosure under section 552.104 of the Government Code.

Section 552.104 excepts "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in a commercial context by keeping some competitors or bidders from gaining

unfair advantage over other competitors or bidders. Open Records Decision No. 541 (1990) at 4. Release of the proposal before the contract has been finally negotiated could damage the department's ability to obtain and negotiate favorable contract terms. Under these circumstances, the department may withhold the proposal from disclosure pursuant to section 552.104. We note, however, that generally neither the contract nor proposal information submitted with the bid is excepted under section 552.104 once the bidding process is over and a contract executed. *Id.* at 5. Thus, if you receive a subsequent request for the information, you should re-assert your additional arguments against disclosure.

However, in view of the projected contract award date and signature date for March 15, 1998, we shall also address the section 552.110 exception you assert as applied to the proposal you submit for our review. We observe that under the Open Records Act, all information held by governmental bodies is open unless it falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). However, in cases such as this one, where a third party's privacy or property interest is implicated, the governmental body may rely on the third party to establish that the information should be withheld under applicable exceptions intended to protect those interests. Gov't Code § 552.305, Open Records Decision No. 542 (1990). A response was not received, and accordingly, the department must release all of the requested information 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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/alg

Ref.: ID# 114425

Enclosures: Submitted documents

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