



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 4, 1998

Ms. Mercedes Leal  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR98-1395

Dear Ms. Leal:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code (the "act"), the Texas Open Records Act. Your request was assigned ID# 115758.

The Harris County Hospital District (the "district"), which your office represents, received two requests for a variety of information concerning the Jefferson Davis Hospital property; specifically, "all environmental site assessments for the site." In response to the request, you submitted to this office for review the information at issue. You state that "[t]he District will release copies of the information requested with the exception of JPI's environmental report which JPI asserts is confidential." On behalf of JPI Texas Development, Inc. ("JPI"), the district has submitted a brief in which sections 552.104, 552.105, and 552.110 of the Government Code have been raised. We have considered the applicable exceptions and arguments and reviewed the submitted information.<sup>1</sup>

Since the property and privacy rights of a third party are implicated by the release of the requested information, we notified JPI of the request for information and of its 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). JPI responded by arguing that the requested

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<sup>1</sup>The facts and arguments presented appear to implicate sections 552.104 and 552.105 on the district's behalf.

information is “highly confidential and proprietary”<sup>2</sup>, and excepted from disclosure under sections 552.104, 552.105, and 552.110 of the Government Code.<sup>3</sup>

We first address the applicability of section 552.104 to the submitted report. 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. This exception is not designed to protect the interests of private parties that submit information to a governmental body. Open Records Decision No. 592 (1991) at 8-9. Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 (1990) at 4.

In the district’s brief to this office, you state that “[t]he district . . . is currently in the process of seeking new bids on the sale of its Jefferson Davis Hospital property.” In this instance, it appears that release of the requested information before a contract is awarded will harm the competitive process. In Open Records Decision No. 170 (1977), this office stated that

[s]o long as negotiations are in progress regarding interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to its proposed contract, we believe that the bidding should be deemed competitive. Release of the bids while the bidding is still competitive would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract being let.

Open Records Decision No. 170 (1977) at 2. Assuming that the bidding process is “still competitive” under the standard enunciated above, you may withhold, at this time, the requested information from required public disclosure under section 552.104. Therefore, under the circumstances presented to us, we conclude that you may withhold submitted report from required public disclosure under section 552.104 of the Government Code.

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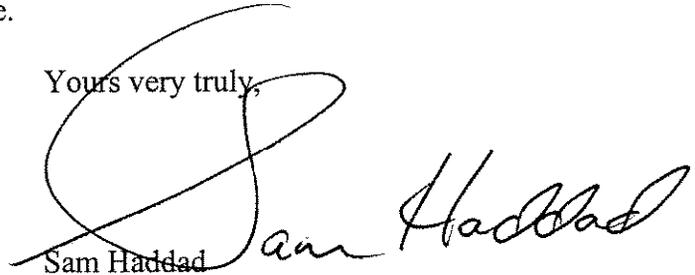
<sup>2</sup>We note that information is not confidential under the Open Records Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential, *see* Open Records Decision No. 479 (1987), or merely because it is furnished with the expectation that access to it will be restricted. Open Records Decision No. 180 (1977).

<sup>3</sup>We begin by disposing of the section 552.104 and section 552.105 exceptions raised on behalf of JPI by their counsel. Sections 552.104 and 552.105 are not applicable to protect the proprietary interests of a third party. *See* Open Records Decision No. 592 (1991).

However, once a contract has been awarded *and* the competitive bidding process is completed, you may not continue to withhold this information under section 552.104. *See* Open Records Decision No. 541 (1990).

As we resolve your request under section 552.104, we need not specifically address your other claimed exceptions 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,

  
Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref.: ID# 115758

Enclosures: Submitted documents

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