



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 1, 1998

Ms. Roxanna M. Gonzales
Assistant City Attorney
City of San Antonio
Office of the City Attorney
Human Resources Division
P.O. Box 839966
San Antonio, Texas 78283-3966

OR98-2076

Dear Ms. Gonzales:

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# 117555.

The City of San Antonio (the "city") received a request for various information which involves a current Request For Proposal ("RFP") for Third Party Administrators, Preferred Providers and/or Utilization Review Providers. The portion of the information you assert is excepted pertains to a copy of a bid proposal the current provider of the services as well as the provider of such services to San Antonio since 1989, Benefit Planners, Inc. ("BPI") holds with the city. You indicate that the city wishes to withhold, at minimum, the portions of the bid proposal which:

- (1) detail the discounts given by the service providers who provide coverage under the network of service providers under the BPI contract,
- (2) all the quality results obtained by BPI connected to the handling of claims, and
- (3) the results of utilization review and turn around times.

You claim that the BPI proposal is excepted from required public disclosure by sections 552.101, 552.104, and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents that you have submitted.¹

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 at 2 (1991), 463 (1987), 453 at 3 (1986). 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 at 4 (1990), 520 at 4 (1989). 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 at 2 (1987).

You inform us that at this time the city is in the process of obtaining proposals for the services in the area of third party administrators, preferred providers, and/or utilization review providers. Additionally you report that BPI informs you that they are concerned with the release of their average discount for hospitals, physicians and ancillary providers. Further you state that BPI believes that this is their competitive edge since its discounts are running over the performance standards per the current contract and are higher than other vendors. Additionally, you state that the information requested is such that, in providing it during this current solicitation for proposals, the Request for Proposal process is undermined, resulting in the city failing to obtain a more favorable offer. Consequently, you may withhold the requested information at issue under section 552.104.²

We are resolving this matter with an informal letter ruling rather than with a

¹We assume that the "representative samples" 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.

²We need not address the remaining exceptions as we address the issues under section 55.2104 of the Government Code.

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,

A handwritten signature in black ink, appearing to read "Janel L. Monteros", with a long horizontal flourish extending to the right.

Janel L. Monteros
Assistant Attorney General
Open Records Division

JIM/nc

Ref.: ID# 117555

Enclosures: Submitted documents

cc: Ms. Victoria Humada
Director of Sales and Marketing
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660 N. Main, Suite 325
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(w/o enclosures)