



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 1, 1998

Ms. Lisa K. Smith
Brown & Fortunato, P.C.
905 S. Fillmore, Suite 400
Amarillo, Texas 79105

OR98-2342

Dear Ms. Smith:

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# 118459.

The South Randall County Hospital District (the "hospital district") received two requests for a copy of the proposals submitted in response to a contract to maintain/enhance the services provide by the hospital district. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 excepts 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). 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 at 8 (1991). Furthermore, section 552.104 is inapplicable when the bidding on a contract has been completed and the contract is in effect. *E.g.*, Open Records Decision No. 541 at 5 (1990), 514 at 2 (1988), 319 at 3 (1982).

We have reviewed the arguments submitted by the hospital district. You assert that the hospital district is in the process of negotiating with Baptist St Anthony's Healthcare but that you have not reached a final agreement with Baptist St. Anthony's Healthcare. Thus,

you contend that as long as the negotiations are in progress and so long as any bidder remains at liberty to withdraw from the negotiations, the bidding is still competitive. You further argue that release of the proposal while the bidding is competitive would necessarily result in an advantage to the bidders and would be detrimental to the interest of the hospital district and its residents. Consequently, we conclude that the hospital district has met its burden of establishing how release of the information would harm the hospital district's interest in the immediate bidding situation. *See* Open Records Decision No. 453 (1986). Once the competitive bidding process is completed and a contract has been awarded, you may not continue to withhold the information under section 552.104. Open Records Decision 541 at 5 (1990). Therefore, the hospital district may withhold the information under section 552.104 of the Government Code.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/nc

Ref.: ID# 118459

Enclosures: Submitted documents

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