



February 24, 1999

Ms. Tina Plummer
Open Records Coordinator
Texas Mental Health & Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR99-0544

Dear Ms. Plummer:

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# 122872.

The Texas Department of Mental Health and Mental Retardation (the “department”) received a request for various documents maintained by the department. You state that documents responsive to items 3, 4, 5, 7, and 8 of the request do not exist. You claim, however, that records relating to a Medicaid managed care procurement conducted by the department and the Texas Commission on Alcohol and Drug Abuse are excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

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 at 2 (1991).

You state that two finalists were announced on November 2, 1998, but contracts have not been awarded. Furthermore, you explain that the “readiness review” process may preclude

¹We presume that you have released any documents not covered by the submitted exhibits. See Gov’t Code § 552.301.

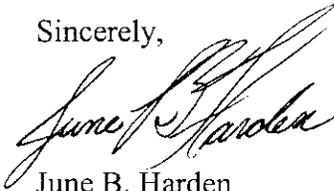
a successful bidder from performing under an executed contract, and therefore, the bidding process may be reopened or the list of finalists may be revised, and that the release of the requested information before the readiness reviews are completed will harm the competitive process. In Open Records Decision 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 at 2 (1977). 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. However, once a contract has been executed *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).

Because we are able to make a determination under section 552.104, we need not address your other claimed exceptions. We caution, however, that some of the requested information may be confidential by law. *See* Gov’t Code § 552.352 (distribution of confidential information may constitute 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 122872

Enclosures: Submitted documents will be delivered by courier

cc: Ms. Jennie Candelaria
Life Management Center For MHMR
P.O. Box 9997
El Paso, Texas 79990
(w/o enclosures)

Ms. Melinda Metteauer
MAXIMUS
1212 East Anderson Lane, #200
Austin, Texas 78752
(w/o enclosures)

Ms. Barbara Leadholm
Magellan Behavioral Health, Inc.
222 Berkeley Street, Suite 1350
Boston, Massachusetts 02116
(w/o enclosures)