



September 21, 1999

Mr. Steve Aragon  
General Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR99-2634

Dear Mr. Aragon:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127528.

The Texas Health and Human Services Commission (the "commission") received two written requests for information. The first request is for copies of all contracts between the commission and Electronic Data Systems Corporation or any of its affiliates. The second request is for copies of correspondence from the federal Health Care Financing Administration relating to the certification of the Medicaid Fraud and Abuse Detection System. Pursuant to a letter from the commission, the requestor limited his requests to a copy of a draft "implementation advance planning document" ("IAPD") for the Texas Integrated Enrollment and Services Project. You state that portions of the IAPD will be released to the requestor. However, pursuant to section 552.104 of the Government Code, you seek to withhold from disclosure the cost-related information contained in the IAPD. The Texas Department of Human Services (the "department") also contends that the cost-related information is excepted from disclosure under section 552.104. We have considered the submitted arguments and reviewed the information at issue.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Governmental bodies may withhold bid information under section 552.104 while governmental officials are in the process of evaluating the proposals and asking competitors

to clarify their bids. Open Records Decision No. 170 (1977). 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). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

You explain that the cost-related information in the IAPD is relevant to the department's procurement of automation for the Texas Integrated Eligibility Redesign System. You contend that the release of this information at this time will harm the state's bargaining position because vendors will know the state's budgetary limits and can tailor their cost proposals accordingly. The department supports your arguments. Under these circumstances, we conclude that the cost-related information on the following pages of the IAPD is protected under section 552.104: 1-16 through 1-17, 8-1 through 8-8, the highlighted portion of 10-2, 10-4 through 10-10, and Appendix E. The commission may therefore withhold this information from disclosure.

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,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 127528

Encl. Submitted documents

cc: Mr. Lawrence Waks  
Mr. Jackson Walker, L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
(w/o enclosures)