



**THE ATTORNEY GENERAL  
OF TEXAS**

August 28, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

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Dear Mr. Kosub:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 6986; this decision is OR89-281.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The City of Seguin received an open records request for copies of all competitive bids submitted to the city in connection with the construction of a new municipal swimming pool. Bids were submitted to the city council, which rejected all of them and instructed the city staff to take new bids with revised specifications that are now being developed. No contract has yet been awarded and new bids will be solicited from the same companies that submitted bids during the first solicitation of bids.

The city seeks to withhold the requested information from required public disclosure under sections 3(a)(4) and 3(a)(10) of the open records act.

Section 3(a)(4) protects from required public disclosure information which, if released, would give advantage to competitors or bidders. Its purpose is to protect a

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government body's purchasing interests by preventing a competitor or bidder from gaining an unfair advantage over other competitors or bidders. It protects the governmental body's interest by assuring that the competitive bidding will be competitive. Open Records Decision No. 463 (1987). This section does not except bids from disclosure when the bidding is over and the contract has been awarded. Open Records Decision No. 306 (1982).

Here, however, bidding is not over. All bids have been rejected and a new solicitation of bids is underway. The former bids and new bids thus form part of a continuing bidding process. Negotiations can be said to be in progress and all bidders are free to furnish additional information. Under similar circumstances, this office has held that bid information need not be released. Open Records Decision No. 170 (1977). Here, no contract has been awarded, new bids will likely be submitted by previous bidders, and information in the rejected bids could give prospective bidders an advantage by advising them how a particular result might be achieved, and so disadvantage the city's purchasing interests. Thus, the information about the bids submitted is excepted from required public disclosure under section 3(a)(4). When bidding is complete and a contract awarded, other principles will apply. See Open Records Decision Nos. 306 (1982); 184 (1978). As we find that the information sought is excepted from required public disclosure under section 3(a)(4), we do not address the possible applicability of section 3(a)(10), except to note that bid proposals may contain information that is confidential under section 3(a)(10). See Open Records Decision Nos. 319, 309 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-281.

Yours very truly,

*Open Government Section  
of the Opinion Committee*

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Assistant Attorney General

DAN/bc

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