



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 29, 1991

Mr. Robert A. MacLean  
Acting Commissioner  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR91-529

Dear Mr. MacLean:

Your predecessor asks whether information in proposals submitted to the Department of Health for a management study of the department is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11732.

We have considered the exceptions you claimed, specifically sections 3(a)(4) and 3(a)(10), and have reviewed the documents at issue. Section 3(a)(4) protects information which would give advantage to competitors or bidders, but is not applicable once the contract in question has been awarded. Open Records Decision No. 509 (1988). We understand that a contract has been awarded to one of the firms submitting proposals. Thus, section 3(a)(4) may not be invoked to protect the information in question.

Section 3(a)(10) protects trade secrets and certain commercial or financial information. While we do not think there has been a sufficient showing why the information in question is protected as "commercial or financial" information, the firms submitting proposals have demonstrated that certain of the information in their proposals constitutes "trade secrets." See definition of trade secret adopted in *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.) *cert denied*, 358 U.S. 898 (1958), and indicia of "trade secret" listed in Restatement of Torts § 757, comment b (1939). Accordingly, the following information in the proposals may be withheld under section 3(a)(10):

1. Andersen Consulting proposal: Parts D and E ("Brief Description of Proposed Audit" and "Detailed Plan of Work") and exhibits 2 and 3 ("Sample Interview Questions" and "Sample Questions")
2. MGT proposal: Part 2 ("Methodology and Approach") and Appendix C ("Client Listing")
3. Coopers Lybrand proposal: "Detailed Plan of Work"
4. Price Waterhouse proposal: Section E ("Detailed Plan of Work")
5. Deloitte & Touche proposal: pages II-11 through II-43 of the "Background and Approach" section
6. B.R. Blackmar proposal: Part III ("Detailed Work Plan"), Appendix A ("Project Workplan"), Appendix C ("Partial List of Clients")

*See generally*, Open Records Decisions Nos. 175 (1977), 184 (1978), 255 (1980), 319 (1982), and 509 (1988). (Copies enclosed.)

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 OR91-529.

Yours very truly,



William Walker  
Assistant Attorney General  
Opinion Committee

WW/mc

Ref.: ID# 11732

Enclosures: Open Records Decisions Nos. 175, 184, 255, 319, 509

cc: Mr. Edward L. Perrine  
Executive Vice President  
MGT of America, Inc.  
P. O. Box 38430  
2425 Torreya Dr.  
Tallahassee, FL 32315

Mr. William E. Young  
Coopers and Lybrand  
1100 Louisiana, Suite 4100  
Houston, Texas 77002

Mr. David Ziskie  
Price Waterhouse  
Office of Government Services  
1801 K Street, N.W.  
Washington, D.C. 20006

Ms. Elizabeth D. Carpenter  
Deloitte and Touche  
Suite 700  
919 Congress Avenue  
Austin, Texas 78701-2444

Mr. Brian R. Blackmarr, P.E., C.M.C.  
President  
B. R. Blackmar & Associates  
Chateau Plaza, Suite 1700  
2515 McKinney Avenue LB-17  
Dallas, Texas 75201

Mr. Martin I. Cole  
Andersen Consulting  
701 Brazos Street, Suite 1020  
Austin, Texas 78701