



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 27, 1992

Mr. Michael Anthony Moss
Assistant City Attorney
P. O. Box 1562
Houston, Texas 77251-1562

OR92-41

Dear Mr. Moss:

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# 13386.

You have received two requests for information relating to the proposal of the Cordish Company to redevelop the Albert Thomas Convention Center (the center). Specifically, the requestor seeks reports concerning previous Cordish ventures; a certain feasibility study; an asbestos report; a plat showing the land area underlying the center; a list of local persons who are equity partners in the Cordish/Albert Thomas venture; any written substantiation of a certain \$50,000,000 improvement cost; reports relative to neighborhood policing; the proposed Cordish lease; financial information relating to Cordish and to the venture; certain budget proposals; and other documents and reports related to the Cordish/Albert Thomas venture. You advise us that some of the requested information has been released. You claim, however, that the remainder is excepted from required public disclosure by sections 3(a)(4), 3(a)(5), 3(a)(10), and 3(a)(11) of the Open Records Act.

The City of Houston (the "city") claims that the requested information is excepted from required public disclosure by section 3(a)(4). Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Open Records Decision No. 541 (1990) at 5 held that "[o]nce the competitive bidding process has ceased and a contract has been awarded, section 3(a)(4) will not except from disclosure either information

submitted with a bid or the contract itself." As you have informed us that the competitive bidding process engendering these materials has concluded and the relevant contract has been awarded, neither the city nor the Cordish Company may properly invoke a section 3(a)(4) exception.

The city also claims that section 3(a)(5) excepts the requested information from required public disclosure. Section 3(a)(5) excepts

information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor.

Section 3(a)(5) is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision No. 564 (1990). Information excepted under section 3(a)(5) that pertains to negotiations for the acquisition of real or personal property may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). As the contracts in this particular instance have already been awarded, section 3(a)(5) no longer applies.

Pursuant to section 7(c) of the act, we have notified third parties whose proprietary interests may be compromised by disclosure of the requested information. In response, we have received a letter from the Cordish Company. The Cordish Company claims that portions of the requested information are excepted from required public disclosure by sections 3(a)(4) and 3(a)(10) of the Open Records Act. Because we have received letters from no other companies to which portions of the requested information might relate, we will limit the scope of this ruling to the claims made by the Cordish Company. Information relating to other companies must be released.

We have considered the exceptions the Cordish Company has claimed and have examined the documents submitted to us for review. We have already dealt with section 3(a)(4). Section 3(a)(10) excepts from required public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." The Cordish Company claims that the contested documents "contain commercial and financial information

that if made public would severely harm the Cordish Interests and the City." However, they do not assert that this commercial and financial information is made privileged or confidential by statute or judicial decision. Furthermore, the Cordish Company does not appear to assert that any of the requested information constitutes trade secrets. Accordingly, a section 3(a)(10) exception may not be properly invoked, and the requested information for which the Cordish Company claims exception from required public disclosure under the Open Records Act must be released.

You further claim on behalf of the city that some of the requested information is excepted from required public disclosure under section 3(a)(11). Your brief to this office, however, does not indicate to which documents or parts thereof section 3(a)(11) may apply. The custodian of records has the burden of proving that records are excepted from public disclosure and of indicating which information is to be excepted. Attorney General Opinion H-436 (1974). If a governmental body does not claim an exception or fails to show how it applies to the records, it will ordinarily waive the exception unless the information is deemed confidential by the act. *See* Attorney General Opinion JM-672 (1987). Accordingly, unless the requested information is made confidential by law or unless you can present a compelling argument within 14 days of receipt of this letter as to why the requested information should be withheld, it must be released.

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 OR92-41.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/GK/lcd

Ref.: ID#s 1386, 13401, 13816

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