



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 18, 1994

Mr. William S. Nail  
General Counsel  
Employees Retirement System of Texas  
P.O. Box 13207  
Austin, Texas 78711-3207

OR94-379

Dear Mr. Nail:

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# 23851.

The Employees Retirement System of Texas ("ERS") received a request for copies of bidders' proposals for provision of employees assistance services. The requestor was an unsuccessful bidder, and five proposals were received in addition to his. You state that the ERS is unaware of any reason why all or part of the requested information should be protected from disclosure, but the agency wishes to provide each bidder an opportunity to submit to this office its reasons for wishing to withhold any information. Accordingly, you referred this request to us pursuant to section 552.305 of the Government Code. We notified the bidders of their right under section 552.305 to submit their reasons why the records should be withheld or released.

Two bidders, one of whom is the requestor, informed you that their proposals may be fully disclosed, and three bidders did not respond to our letter. Since no showing has been made that any of these five proposals are excepted from disclosure under the Open Records Act, the proposals are available to the requestor.

One bidder responded by claiming that part of its proposal could be made available to the public under the Open Records Act but the remainder was proprietary information, the disclosure of which would "give advantage to a competitor" or "reveal trade secrets" thus raising section 552.110 of the Open Records Act.

Section 552.110 excepts from disclosure "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." This office has adopted the definition of trade secret found in the Restatements of Torts, section 757 (1939). Open Records Decision No. 554 (1990). Whether particular information is or is not a trade secret is a question of fact, which cannot be resolved in a ruling by this office. *Id.* For this reason, we will accept a claim that particular information constitutes a trade secret when a *prima facie* case is made that the information constitutes a trade secret and no argument is made that rebuts this conclusion as a matter of law. *Id.* In the case before us, however, the bidder has not made a *prima facie* case that his information is a trade secret, but has merely asserted that it is. Accordingly, he has not shown that he is within the "trade secret" branch of section 552.110.

Section 552.110 also protects "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." This office has determined that section 552.110 is redundant with section 552.101. Open Records Decision No. 592 (1991). We know of no statute or judicial decision that renders this information confidential. Accordingly, all proposals must be disclosed in their entirety.

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

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Open Government Section

SLG/KKO/tho

Ref.: ID# 23851

Enclosures: Open Records Decision Nos. 554, 592  
Submitted documents

cc: Mr. David O. Navarre  
Director, Administrative Services  
Texas Clinical Associates  
1900 E. Oltorf, Suite 114  
Austin, Texas 78741  
(w/o enclosures)

Mr. Tommy Wood  
Behavioral Health, Inc.  
4807 Spicewood Springs Road, Suite 1130  
Austin, Texas 78759  
(w/o enclosures)