



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1995

Ms. Margo M. Kaiser
Assistant General Counsel
Texas Department of Commerce
P.O. Box 12728
Austin, Texas 78711-2728

OR95-477

Dear Ms. Kaiser:

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# 31174.

The Texas Department of Commerce (the "department") received an open records request for all records "relative to the JTPA Title II-A Contract between CAD Techniques, Inc. and the Dallas Private Industry Council." You have submitted to this office for review a United States Department of Labor ("DOL") Investigative Memorandum,¹ with supporting documentation, portions of which you contend must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The DOL, upon being informed of the current open records request, provided the department a redacted copy of the investigative report to reflect those portions of the report that the DOL considers to be confidential under the federal Freedom of Information Act, 5 U.S.C. § 552. Further, the DOL has identified specific memoranda of interviews it conducted during the course of its investigation that it also considers to be confidential under federal law. The DOL has instructed the department not to release to the public any information the DOL considers to be confidential.

In Open Records Decision No. 561 (1990), this office addressed whether certain information provided to a city's police department by the Federal Bureau

¹Because you have not argued that any other responsive document held by the department is excepted from required public disclosure, we assume that the department has made available to the requestor all other requested records.

of Investigation, and considered by that agency to be confidential under federal law, may be released to the public under the Open Records Act.

In the case at hand, a federal agency has shared information with a subdivision of the State of Texas. In such an instance, the public policy in favor of the exchange of information between governmental agencies is fully as strong as when the exchange is between state agencies. This policy strongly favors the continued availability of such information to local governments in Texas. The federal agency considers the information in question to be confidential as a matter of federal law. Under controlling federal law and agency policy, a local government may enjoy greater access to this information than the news media or the general public. We hold that when information in the possession of a federal agency is 'deemed confidential' by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [former] section 3(a)(1) of the Open Records Act [now section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law.² (Footnote in original.)

Your request is governed by Open Records Decision No. 561 (1990). Because the DOL shared the information at issue with the department in connection with the department's duty to investigate complaints of violations of the federal Job Training Partnership Act, 29 U.S.C. ch. 19, any information the DOL considers to be confidential under the federal Freedom of Information Act continues to be confidential in the hands of the department. Accordingly, the department must withhold those portions of the memorandum and accompanying exhibits that the DOL has identified as being confidential under federal law.

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 upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

²We note that federal authorities may apply confidentiality principles found in FOIA differently from the way in which those principles are applied under the Open Records Act according to Texas precedent. See, e.g., *Department of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) for a discussion of the application of privacy interests recognized under FOIA.

KKO/RWP/rho

Ref.: ID# 31174

Enclosures: Submitted documents

cc: Mr. Norman M. Bonner
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(w/o enclosures)