



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1995

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR95-1229

Dear Mr. Peck:

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# 36545.

The Texas Department of Criminal Justice ("TDCJ") received a request for "[t]he proposal filed by the Amarillo Economic Development Corporation regarding the proposed expansion of prison space in and around Amarillo." You contend that the requested information is excepted from required public disclosure under sections 552.104 and 552.110 of the Government Code.

Section 552.104 excepts "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is designed to protect the interests of the governmental body as in a competitive bidding situation for a contract or benefit. Open Records Decision No. 592 (1991) at 8. It is not designed to protect the interests of private parties submitting information to a governmental body. *Id.* at 8-9. A governmental body must show some actual or specific competitive harm in a particular competitive situation. Open Records Decision No. 541 (1990) at 4. General allegations or remote possibilities that an unknown competitor will gain an unfair advantage are not sufficient to protect information under section 552.104. *Id.* Once the bidding process has ceased and a contract has been awarded, section 552.104 will generally not except information submitted with a bid or the contract itself from disclosure. Open Records Decision No. 514 (1988).

You state that "TDCJ is currently negotiating with the Amarillo Economic Development Corporation about the possibility of expanding prison capacity in the Amarillo area." You claim that the release of the requested information "would greatly complicate the capacity of the parties to negotiate candidly and effectively, and most assuredly that of TDCJ." Moreover, you claim that TDCJ is negotiating in communities other than Amarillo and that the release of the requested information would adversely impact TDCJ's negotiations with other proponents. As TDCJ is currently involved in the negotiation process with Amarillo Economic Development Corporation and other communities in the state, you may withhold the requested information under section 552.104 of the Government Code. As we resolve this matter under section 552.104, we need not address the applicability of section 552.110 of the Government Code.

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,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/LBC/rho

Ref: ID# 36545

Enclosures: Submitted documents

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