



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 12, 1996

Mr. Richard J. Ybarra  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR96-0535

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38376.

The Office of the Attorney General received a request for bid documents submitted by "a predecessor to Lockheed Martin in order to obtain a contract from the Attorney General for debt collection services in child support enforcement cases." You state that the documents "have been requested by a public/private group working to study improvements in child support pursuant to a mandate of the Texas Legislature." You are concerned that section 552.110 of the Government Code may except the bid documents from required public disclosure.

Pursuant to section 552.305 of the Government Code, this office notified Lockheed Martin of this request so that it could have the opportunity to raise and explain the applicability of exceptions to required public disclosure of the requested information. Lockheed Martin asserts that the requested information is excepted from disclosure pursuant to sections 552.102, 552.104 and 552.110 of the Government Code.

Lockheed Martin argues that personnel information, including resumes of its employees, contained in its bid documents is excepted from disclosure under section 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." That section, however, only applies to protect the privacy of public employees. Open Records Decision No. 319 (1982) at 2. Therefore, section 552.102 is inapplicable to the personnel information contained in the bid documents.

Because Lockheed Martin contends that release of the personnel information would invade the privacy of the subjects of the information, we will address its arguments under the common-law privacy aspect of section 552.101. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

We have reviewed the information that Lockheed Martin wishes to withhold under common-law privacy. The information is not highly intimate or embarrassing. Similar information regarding applicants for public employment and in the personnel files of public employees is not protected on the basis of common-law privacy. See Open Records Decision 455 (1987). Therefore, sections 552.101 does not except the personnel information from required public disclosure.

Lockheed Martin next claims that certain information in its bid documents is excepted from disclosure under section 552.104 of the Government Code. That section excepts information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. A governmental body may waive section 552.104 since the exception was developed to protect a governmental body's interests. See Open Records Decision No. 592 (1991) at 8. The Office of the Attorney General does not claim that section 552.104 excepts the requested information from required disclosure. Since the only interest involved appears to be that of a private entity, Lockheed Martin, section 552.104 does not apply to protect its interest. Therefore, the Office of the Attorney General may not withhold any portions of Lockheed Martin's bid proposal pursuant to section 552.104.

Section 552.110 excepts from disclosure two categories of information: (1) "[a] trade secret" and (2) "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Lockheed Martin contends that portions of its bid documents are excepted from disclosure as "commercial or financial information."

In applying the "commercial or financial information" branch of section 552.110, this office now follows the test for applying the correlative exemption in the Freedom of Information Act, 5 U.S.C. § 552(b)(4). See Open Records Decision No. 639 (1996). Commercial or financial information is confidential if disclosure of the information is likely either (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. See *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

To establish that the public release of information is likely to cause substantial competitive harm, a business must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. See Open Records Decision No. 639 (1996) at 4 (citing *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397 (5th Cir.), cert. denied, 471 U.S. 1137 (1985)). Lockheed Martin states that portions of the documents have "substantial commercial value in the hands of third parties and/or potential competitors and should therefore be excepted from disclosure." We do not believe that Lockheed Martin has established that it actually faces competition and that substantial harm to its competitive position could result from the release of the information. Consequently, we conclude that the Office of the Attorney General may not withhold the information under section 552.110 of the Government Code. The Office of the Attorney General must therefore disclose the requested information.

We are resolving this matter with this 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 may not be relied upon as a previous determination 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/rho

Ref.: ID# 38376

Enclosures: Submitted documents

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