



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 6, 1997

Ms. Lavergne Schwender  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR97-0011

Dear Ms. Schwender:

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# 102778.

The Harris County Purchasing Agent (the "county") received several requests for information concerning request for proposal (RFP) Job No. 96/0301. The requestors seek "copies of the proposals by all parties who responded to Group 4 for TPN Compounders and Disposable," "a copy of this[sic] cost analysis," as well as a request for "an opportunity to view all responses . . . [and] a copy of all financial analysis[sic] of the job responses completed by your office." As provided by section 552.305-of the Open Records Act, this office provided each of the requestors the opportunity to submit reasons why the information at issue should be withheld.

Section 552.110 provides an exception for "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Open Records Decision No. 592 (1991) at 2. With regard to the trade secret aspect of section 552.110, this office will accept a claim that information is excepted from disclosure if a prima facie case is made that the information is a trade secret and no argument is submitted that rebuts that claim as a matter of law. Open Records Decision No. 552 (1990) at 5; *see* Open Records Decision No. 542 (1990) (governmental body may rely on third party to show why information is excepted from disclosure).

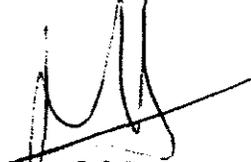
However, this office cannot conclude that information is a trade secret unless the county or third parties provide evidence of the factors necessary to establish a trade secret claim. Open Records Decision No. 402 (1983). The county did not provide facts sufficient

to show the applicability of these factors. In fact, none of the third parties responded. *See* Open Records Decision No. 363 (1983) (third party's duty to establish how and why exception protects particular information).

Moreover, neither the county nor any one of the third parties has shown that the submitted information comes within the commercial or financial aspect of section 552.110. As this office has not received a response from any of the third parties since we sent notification of the request more than three weeks ago, this office has no basis for applying any exceptions to required public disclosure of this information.<sup>1</sup> Therefore, the county should release the proposals to the requestor.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/rho

Ref.: ID# 102778

Enclosures: Submitted documents

cc: Ms. Dianna J. Davis  
Baxter Healthcare Corporation  
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(w/o enclosures)

Ms. Candice Dunn  
Baxa Corporation  
13760 E. Arapahoe Road  
Englewood, Colorado 80112  
(w/o enclosures)

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<sup>1</sup>We note that information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. of the south v. Texas Indus. Accident Bd.*, 540 S.W. 2d 668, 677 (Tex.1976), *cert. denied*, 430 U.S. 931 (1977). Consequently, these proposals must be released, notwithstanding any language in the RFPs specifying otherwise.

Ms. Karen M. Reifler  
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