



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 6, 1997

Mr. Norbert J. Hart
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR97-0288

Dear Mr. Hart:

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# 103756.

The City of Corpus Christi (the "city") received a request for a copy of the "response from Municipal Services Bureau ["MSB"] for Bid # BI-0259-96 that was presented on November 13, 1996." The city raises no exception to the public disclosure of the requested information, but has not released the information in order to provide MSB an opportunity to assert any privacy or property interest it may have in the requested information.

MSB asserts that the release of its bid before the city has awarded the contract "would undermine the total purpose of the 'sealed' bid process." MSB also maintains that "[i]f any competitor were given the chance to see opposing bids, this would give them the opportunity to go back to the city to convince them to award them the bid or, in the very least, to give them the opportunity to amend their bid." MSB also asserts that its client lists and names of reference are trade secrets excepted from public disclosure based on Government Code section 552.110.

MSB's arguments that the release of its bid will undermine the bidding process appear to suggest that the information is excepted from public disclosure under Government Code section 552.104. That exception applies to "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, usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the

governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision 541 (1990). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. Consequently, a governmental body may waive section 552.104. *See* Open Records Decision No. 592 at 8.

The city does not assert section 552.104. MSB lacks standing to assert section 552.104. Therefore, the city may not withhold the information from public disclosure based on Government Code section 552.104.

Government Code section 552.110 excepts from disclosure trade secrets. We have reviewed MSB's arguments and conclude that its customer list and references constitute a trade secret. *See* Restatement of Torts § 757 cmt. b (1939) (defining trade secret and listing six factors to be considered in determining whether information constitutes trade secret); *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Accordingly, the city must withhold the customer and reference lists from public disclosure based on section 552.110 of the Government Code.

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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 103756

Enclosures: Submitted documents

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