



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 12, 1997

Mr. Terry Trimble
Interim Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR97-1376

Dear Mr. Trimble:

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# 107269.

The Texas Department of Human Services (the "department") received a request for "follow-up reports or documents that have been prepared" related to a preliminary report previously provided the requestor. You explain that the follow-up document requested is commonly referred to as "the Keane report." You state that you have released most of the information responsive to the request. You claim, however, that a portion of the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 (1991) at 2. Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision 541 (1990) at 4.

You state that the department is currently requesting bids from potential vendors for a computer conversion project. You claim that the release of the estimated actual cost information in the requested document will harm the competitive bidding process because the department cannot be assured of receiving the bidder's truly competitive bid if the prospective bidder were to learn the estimated cost information in the requested report. In Open Records Decision No. 170 (1977), this office stated that

[s]o long as negotiations are in progress regarding interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to its proposed contract, we believe that the bidding should be deemed competitive. Release of the bids while the bidding is still competitive would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract being let.

Open Records Decision No. 170 (1977) at 2. Assuming that the bidding process is "still competitive" under the standard enunciated above, you may withhold, at this time, the estimated cost information portion of the requested information from required public disclosure under section 552.104. If the bidding process is no longer competitive, however, you may not rely on section 552.104 to withhold this information. Once the competitive bidding process is completed and a contract has been awarded, you may not continue to withhold this information under section 552.104. Open Records Decision No. 541 (1990) at 5. Under the circumstances presented to us, we conclude that you may withhold the information, which you have marked, from required public disclosure under section 552.104 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref.: ID# 107269

Enclosures: Marked document

cc: Mr. Jerry Abel
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(w/o enclosures)