



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 9, 1998

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

OR98-0637

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# 113340.

The Harris County Purchasing Agent's office (the "county") received a request for information submitted to the Harris County Hospital District by Express Bill/XPI Data, Inc. ("Express Bill") in response to a request for proposal regarding job number 97/0392. You inform us that the county has released those portions of the proposal which are not clearly marked "confidential," but seeks an opinion from this office concerning what, if any, of the "confidential" material is protected from disclosure under the Open Records Act.¹ The information at issue consists of Express Bill's unaudited balance sheets for 1996 and 1997 and a "Statement of Business Form and Merger Activity."

Pursuant to section 552.305 of the Government Code, we notified Express Bill of the request for information and of its opportunity to claim that the information at issue is excepted from disclosure. Express Bill responded by submitting a copy of a notice from the county to "All Prospective Bidders" dated August 27, 1997, and a copy of a letter dated December 15, 1997 from Express Bill to the county. In its December 15, 1997 letter, Express Bill refers to a provision in the August 27, 1997 notice which, under the heading "Addendum No. 1," reads "[t]he [Open Records] act does permit withholding data such as 'trade secrets' or confidential financial information from public view IF THE APPROPRIATE MATERIAL TO BE KEPT CONFIDENTIAL IS CLEARLY

¹Although you inform us that Express Bill claims that the information at issue is excepted from disclosure pursuant to section 552.110 as trade secret or proprietary information, Express Bill made no section 552.110 argument to this office. Therefore, we will not address the confidentiality of the information under section 552.110.

MARKED AS SUCH IN THE ORIGINAL SUBMISSION OF THE PROPOSAL. To the extent permitted by law, vendors may request in writing non-disclosure of confidential data.” (Emphasis in the original). Specifically, Express Bill states,

[w]e understand that our competitors should have free access to the bid amount, marketing material and any other section of our proposal, however, we had a firm agreement with your office that no financial records would ever be made public record. This agreement was outlined in Addendum No. 1 dated August 27, 1997 We are a privately held family business that is not required to share this sensitive information with our competition. You assured us that this would not be a problem which is why we felt comfortable submitting this material.

Other than as noted above, Express Bill made no other arguments to this office concerning the confidential nature of the submitted information.

We note that governmental bodies are prohibited from entering into contracts to keep information confidential, Open Records Decision Nos. 514 (1988), 484 (1987), 479 (1987), 283 (1981), 207 (1978), 133 (1976), nor may a governmental body use a contract to invoke section 552.101, Open Records Decision Nos. 605 (1992), 491 (1988). Therefore, Express Bill may not rely on the provision cited above in the August 27, 1997 notice under the heading “Addendum No. 1” to withhold the requested information. As Express Bill makes no other argument against disclosure, we conclude the requested information is public and must be released 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 113340

Enclosures: Submitted documents

cc: Mr. Reid Kuhn
7102 Mullins
Houston, Texas 77081
(w/o enclosures)