



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 1, 1998

Ms. Anne M. Constantine  
Legal Counsel  
Dallas/Fort Worth International Airport  
P.O. Drawer 619428  
DFW Airport, Texas 75261-9428

OR98-1570

Dear Ms. Constantine:

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# 116143.

The Dallas-Fort Worth International Airport Board (the "board") received a request for a copy of the bid proposal submitted to the board by the Trammell Crow Company ("Trammell Crow") for an air cargo facility at Dallas-Fort Worth International Airport. You state that the board is in the process of releasing the public portions of the bid proposal. However, you claim that certain marked portions of the proposal are excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.305 of the Government Code, we notified Trammell Crow of the request for information and of its opportunity to claim that the bid proposal is excepted from disclosure. Trammell Crow responded by claiming that portions of the proposal are excepted from disclosure under section 552.101 and 552.110 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We are not aware of, nor have you referred us to, any law that would make the proposal confidential. Therefore, we conclude that the proposal is not excepted from disclosure under section 552.101.

Section 552.110 excepts from disclosure a trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of

Information Act in applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770.

The board argues that disclosure of the marked information will likely impair its ability to obtain necessary information in the future. We do not believe that the board's ability to obtain similar information in the future will be impaired by release of the information at issue here because it is unlikely that companies will stop competing for government contracts. *See Racal-Milgo Gov't Sys. v. SBA*, 559 F. Supp. 4 (D.D.C. 1981). In other words, the benefits associated with submission of this particular type of information make it unlikely that the board's ability to obtain future submissions will be impaired. However, we must address Trammell Crow's claim that releasing portions of its bid proposal will cause it substantial competitive harm.

"To prove substantial competitive harm, the party seeking to prevent disclosure 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." *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert. denied*, 471 U.S. 1137 (1985) (footnotes omitted). After reviewing the submitted arguments, we agree that much of the marked information is excepted as commercial and financial information. However, we note that some of the information you have marked does not appear to be the type of information protected by section 552.110.<sup>1</sup> *See* Open Records Decision Nos. 639 (1996), 554 (1990), 552 (1990) (section 552.110 only applicable to secret information that gives its owner some competitive advantage over those who do not have access to information). We have marked the information that the board must release to the requestor.<sup>2</sup> The remaining marked information must be withheld.

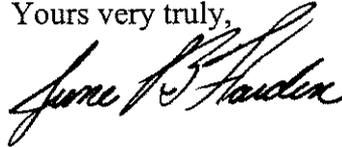
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

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<sup>1</sup>Trammell Crow seeks to withhold details of its lease negotiations under section 552.110. Lease terms are not "a process or device for continuous use in the operation of the business;" they are information relating to a contract, that is, a "single or ephemeral [event] in the conduct of the business." *See* Open Records Decision No. 552 (1990). Furthermore, federal cases applying the FOIA exemption 4 have required a balancing of the public interest in disclosure with the competitive injury to the company in question. *See* Open Records Decision No. 494 (1988) at 6; *see generally* Freedom of Information Act Guide & Privacy Overview (1995) 136-138, 140-141. The public has a legitimate interest in knowing how public monies are spent, and therefore, the terms of a lease with a governmental body are not generally protected as commercial or financial information under section 552.110.

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 116143

Enclosures: Submitted documents

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