



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 17, 1998

Mr. Jack Naranjo  
Assistant City Attorney  
City of Arlington  
200 W. Abram Street  
Box 231  
Arlington, Texas 76004-0231

OR98-2214

Dear Mr. Naranjo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117457.

The City of Arlington (the "city") received a request for the last bids submitted for fire alarm inspection and service. The last bids were submitted in 1995. You explain that the requestor has clarified that he only seeks the previously awarded bid from 1995. You state that the city is currently collecting new bids for the inspection and maintenance of the city's fire alarms. You indicate that the city solicits bids for this service every three years. The requested bid includes the prices and costs the vendor would charge the city for the maintenance service. You claim that the requested bid information is excepted from required public disclosure by sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is 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 in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. See Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 at 4 (1990), 520 at 4 (1989). A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records

Decision No. 463 at 2 (1987).

You inform us that the city is currently in the bidding process for the fire alarm inspection and maintenance contract. You state that you are opposed to "tainting the bidding process" by giving an unfair advantage to bidders. You explain that

[r]elease by the city of the information sought would give the requestor an unfair advantage in that he would be able to systematically estimate, and undercut his competitor's bids, especially Fire Systems Design, who submitted the previous successful bid. While this prospect initially appears favorable to the city, the city is concerned that the pressure to beat competitors may prompt the requestor to make an offer which involves speculative projections. Basically, the city is concerned that the information sought will improperly influence the requestor's proposal and that the requestor will gain an unfair advantage.

You also argue that because the city solicits the fire alarm bids on a recurring basis, section 552.104 serves to protect the information here. *See* Open Records Decision 541 (1990) (discussing applicability of section 552.104 when private party may be harmed by release of bid information; opining that section 552.104 does not protect private bidders' competitive interests in marketplace). After examining your arguments and the requested information, we do not believe that it is protected by section 552.104. The information at issue involves a previously awarded contract from three years ago. We believe that any potential specific harm in the release of the information at this time is too speculative. Open Records Decision Nos. 541 at 4 (1990), 520 at 4 (1989). Furthermore, the general terms of a financial transaction with a state agency are not usually excepted from disclosure. Gov't Code § 552.022(3); *Cf.* Open Records Decision No. 541 at 8 (1990) (terms of contract with state agency); 514 (1988) (public has an interest in knowing prices charged by government contractors), 184 (1978).

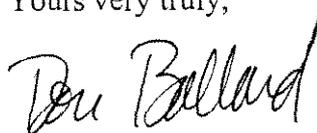
Additionally, we do not believe that the information may be withheld under section 552.110. Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified Fire System Design about the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). This office has received no response from the company.

When seeking to withhold information under section 552.110, it is the governmental body's or the private third party's burden to establish that section 552.110 applies. *See* Open

Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party 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), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). We have examined the city's arguments. We do not believe that you have established that the 1995 bid information falls within the protection of section 552.110. See Gov't Code § 552.022(3). Pricing information is generally not a trade secret because it relates exclusively to a particular circumstance, that is, "single or ephemeral events in the conduct of the business" rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt. b (1939); see *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), cert. denied, 358 U.S. 898 (1958); Open Records Decision Nos. 319 at 3 (1982), 306 at 3 (1982). Nor do we believe the bid information is protected commercial or financial information. See *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); Open Records Decision Nos. 639 (1996), 494 at 6 (1988) (balancing public interest in disclosure of information with competitive injury to company); Freedom of Information Act Guide & Privacy Act Overview (1995) 136-138, 140-141, 151-152 (disclosure of prices is cost of doing business with government). Cf. 514 (1988) (public has an interest in knowing prices charged by government contractors), 184 (1978). The requested bid information must be released.

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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/nc

Ref: ID# 117457

Enclosures: Submitted documents

cc: Mr. Robert Danesworth  
Total Fire & Safety Incorporated  
6026 Scyene Road  
Dallas, Texas 75227  
(w/o enclosures)