



March 22, 1999

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health &
Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR99-0786

Dear Ms. Plummer:

You ask this office to clarify its ruling in Open Records Letter 98-2978 (1998). Your request was assigned ID# 123053.

The Department of Mental Health and Mental Retardation (the “department”) received requests for records relating to a Medicaid managed care procurement program conducted by the department and the Texas Commission on Alcohol and Drug Abuse (“TCADA”). In Open Records Letter No. 98-2978, this office concluded that the department could withhold the requested records under section 552.104 of the Government Code “until such time as the contract is awarded.”

Section 552.104 provides that information is excepted from required disclosure if the release of the information would give advantage to a competitor or bidder. In your request for clarification you note that in the department’s original request for a decision, you sought to withhold the requested information until the process known as the “readiness review” is completed as required by section 533.007 of the Government Code. Section 533.007 requires the Health and Human Services Commission, or an agency operating part of the state Medicaid managed care program, to review each managed care organization that contracts to provide health care services through a managed health care plan to determine whether the organization is prepared to meet its contractual obligations. *Id.*, see also Gov’t Code § 533.001 (definitions). You explain that “if a contractor does not pass the readiness review, the Department and TCADA may consider terminating that contract and either

reopening the bidding process or revising the list of finalists; therefore the procurement process will not be complete until the contract compliance review is completed." You claim that release of the requested information before the readiness review is completed will harm the department's competitive position and that, therefore, the coverage of section 552.104 should extend until the readiness review is completed.

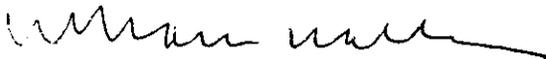
This office previously stated that

[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 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 at 2 (1977). Based on your representations and our review of the applicable law, we clarify our ruling in Open Records Letter No. 98-2978: the department may withhold the requested information until the contract to which the information relates is awarded *and* until the readiness review process required by section 533.007 of the Government Code is complete.

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.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 123053

cc: Ms. Diane T. Carter
Hilgers & Watkins
98 San Jacinto Boulevard, Suite 1300
Austin, Texas 78701

Mr. Richard L. Powers
Secretary/Treasurer
Southwest Community Behavioral Care
6363 Harry Hines Boulevard, Suite 100
Dallas, Texas 75235-5227