



July 26, 1999

Mr. Mark Walker  
Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

OR99-2099

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127195.

The Lower Colorado River Authority (the "LCRA") received a request for information under the Texas Public Information Act on June 2, 1999 for "the bids submitted by Aon and Marsh." You contend that the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.104, and 552.110 of the Government Code. However, you did not request a decision from this office until June 18, 1999. Consequently, you failed to request a decision within the ten business days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See Hancock*, at 381.

You have not shown compelling reasons why the information at issue should be withheld from the public pursuant to section 552.104 of the Government Code. Consequently, we deem this particular exception to disclosure as being waived. On the other hand, because you suggest that the information at issue may be confidential under section 552.101 or 552.110, we will consider the applicability of these exceptions. *See* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

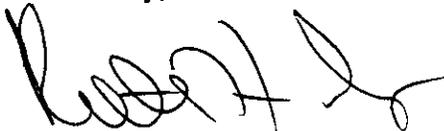
Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or *by judicial decision*.” (Emphasis added.) Section 552.110 of the Government Code protects “trade secret[s] or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.” Section 552.305 of the Government Code authorizes governmental bodies to rely on the arguments of a third party to demonstrate how the requested information implicates the party’s privacy or proprietary interests, and thus, is excepted from required public disclosure under sections 552.101 and 552.110.

In accordance with the practice this office established in Open Records Decision No. 575 (1990), this office notified representatives of J&H Marsh & McLennen (“Marsh & McLennen”) and Aon Risk Services of Texas, Inc. (“Aon”) that we received your request for an open records decision regarding matters affecting their proprietary interests. In our notification, this office requested an explanation as to why the information in their respective proposals was excepted from public disclosure, with the caveat that unless we received such explanation within a reasonable time, this office would instruct the LCRA to disclose the information unless the information is otherwise excepted from required public disclosure.

More than three weeks have elapsed since we issued our notice to Aon and Marsh & McLennen. Aon has failed to submit written comments. Although a representative of Marsh & McLennen responded to our notice, contending that portions of its proposal are excepted from required public disclosure, that response did not raise any particular exception to required public disclosure or otherwise demonstrate the applicability of section 552.110 of the Government Code. Consequently, this office has no basis on which to conclude that any portion of the two proposals at issue are excepted from public disclosure. The LCRA must release both of the requested proposals 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.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/RWP/eaf

Ref.: ID# 127195

Encl. Submitted documents

cc: Mr. Robert A. Foss  
Arkwright Mutual Insurance Company  
24950 Country Club Boulevard, Suite 120  
North Olmsted, Ohio 44070-5335  
(w/o enclosures)

cc: Mr. John P. Greve  
Senior Vice President  
J&H Marsh & McLennen  
100 Congress Avenue, Suite 2100  
Austin, Texas 78701  
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cc: Mr. Marshall Nadel  
Executive Vice President  
Aon Risk Services of Texas, Inc.  
Natural Resources Group  
2000 Bering Drive, Suite 900  
Houston, Texas 77057  
(w/o enclosures)

cc: Mr. Charles L. Young, Jr.  
Senior Consultant  
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(w/o enclosures)