

CERTAIN BID INFORMATION EXEMPT FROM ACCESS TO PUBLIC RECORDS LAW

The Vermont Supreme Court has held that certain financial records of a business that submits a bid for a contract are protected under the public records law. 1 V.S.A. § 317(c)(9). *Springfield Terminal Railway Co. v. A.O.T. et al.*, Vt. No. 2001-447 (Nov. 1, 2002). (“A.O.T.” is hereinafter referred to as “VTrans,” its new name since this case originated.)

Springfield Terminal Railway (STR) was one of several companies that submitted a proposal to provide freight service for VTrans. During the bid process, STR submitted a letter asking that it be allowed to inspect and/or copy documents related to the other bids and the selection of the contractor. VTrans produced some of the documents but withheld others that it judged to be exempt from public disclosure under 1 V.S.A. § 317.

This appeal was taken based on VTrans’ refusal to disclose some financial information of the other bidders, including “balance sheets, income statements, profit and loss statements, statements of retained earnings, statement of cash flows, and ... freight and passenger flow projections.”

The Court noted that Vermont’s Public Records Law emphasizes “a strong policy favoring access to public documents and records.” Records must be disclosed unless the public agency holding the documents can show that they are exceptions under 1 V.S.A. § 317 (c). In this case, the analysis hinged on 1 V.S.A. § 317(c)(9) which exempts: “...trade secrets, [including, but not limited to], any compilation of information, which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know or use it.”

STR v. AOT at 4. The Court said the Legislature intended to protect the confidentiality of “internal, corporate financial information” which, if provided to competitors, would give them an unfair advantage in a bidding process. STR admitted that it wanted its competitors’ business information in order to gain a competitive advantage and that it was “being noseey.” The Court pointed out that this sort of financial information must be protected so that government agencies asking for public bids which include sensitive financial information will be able to keep such information confidential, preserve the integrity of the bidding process and make well-informed decisions based on the information received.

Relying on this case, municipalities, when asking for bids, can insist on complete and accurate financial information and can assure bidders it will be kept confidential and not released to competitors.

The important point here is that *all* records collected by government are presumed to be public and subject to public inspection. The burden is on the government agency to show why a document is not available upon request.

Note that this public records interpretation is consistent with the Open Meeting provision for executive sessions. Although most meetings of government bodies must be open to the public, a public body may go into executive session to consider sensitive matters that might create an unfair advantage for the public body or for another party if certain information were made public. 1 V.S.A. § 313 (1).

- Libby Turner, VLCT Staff Attorney