



Office of the Attorney General

State of Texas

April 14, 1992

DAN MORALES
ATTORNEY GENERAL

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

OR92-135

Dear Ms. Atwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14901.

You have received a request for information received by the Dallas/Fort Worth International Airport (the "airport") in response to an August 14, 1991, Request for Proposal ("RFP"). Specifically, the requestor seeks:

1. The sale price of the lockers to DFW at the end of 5, 6, and 7 years offered by *all* RFP respondents.
2. The price to the public proposed by *all* RFP respondents.
3. A copy of the letter from TraveLoc to DFW withdrawing from the contract awarded as result of the RFP process.

(Emphasis in original.) You do not object to release of item 3. You advise us that of the RFP respondents, only TraveLoc, Inc. objects to release of pricing information responsive to items 1 and 2 on the basis that it is excepted from required public disclosure by sections 3(a)(4) and 3(a)(10) of the Open Records Act.

Pursuant to section 7(c) of the act, we have notified the third party whose proprietary interests may be compromised by disclosure of the requested

information. We have received no response. You inform us, however, that TraveLoc, Inc. has advised the airport that it objects to release of pricing information responsive to the request. You advise us that TraveLoc, Inc. considers that information to be proprietary and confidential commercial or financial information or trade secrets, disclosure of which would cause substantial harm to its competitive position and give an advantage to its competitors. TraveLoc, Inc., you advise us, asserts that such information is excepted from required public disclosure by sections 3(a)(4) and 3(a)(10) of the Open Records Act.

Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. "Once the competitive bidding process has ceased and a contract has been awarded, section 3(a)(4) will not except from disclosure either information submitted with a bid or the contract itself." Open Records Decision No. 541 (1990) at 5. As you have informed us that the competitive bidding process engendering these materials has concluded, and the relevant contract has been awarded, neither you nor TraveLoc, Inc. may properly invoke a section 3(a)(4) exception. *See id.*

Section 3(a)(10) excepts from required public 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. Based on your representation of TraveLoc's arguments, we infer that TraveLoc, Inc. relies on both branches of that exception. The Texas Supreme Court has adopted the definition of trade secret from the Restatement of Torts, section 757. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. The Restatement lists six factors to be considered in determining whether information constitutes a trade secret. These factors are indicia of whether information constitutes a trade secret; depending on the information being considered, one factor alone may be indication of a trade secret. RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 552 at 3.

In making trade secret determinations under section 3(a)(10), this office will accept a claim as valid if the claimant establishes a *prima facie* case for its assertion of trade secrets that is unrebutted as a matter of law. *Id.* at 5. Whether a claimant makes a *prima facie* case depends on whether its arguments, as a whole, correspond to the criteria for trade secrets detailed in the Restatement of Torts. *Id.* at 2-3. Section 3(a)(10) also protects certain commercial and financial information that

need not constitute a trade secret. Open Records Decision No. 592 (1991) held that "[i]n order to be excepted from required public disclosure under section 3(a)(10) of the Open Records Act, 'commercial or financial information obtained from a person' must be 'privileged or confidential' under the common or statutory law of Texas." *Id.* at 9 (citing the summary). When an agency or company fails to provide relevant information regarding factors necessary to make a 3(a)(10) claim, there is no basis to withhold the information under section 3(a)(10). *See* Open Records Decision No. 402 (1983).

We have examined the documents submitted to us for review. Neither the airport nor Traveloc, Inc. have demonstrated how the requested information constitutes a trade secret. Further, it has not been demonstrated that the requested information is deemed privileged or confidential by law. Accordingly, the requested information may not be withheld from required public disclosure under section 3(a)(10) of the Open Records Act and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-135.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lmm

Ref.: ID# 14901

cc: Mr. Louis T. Asher
Amlock, Inc.
P. O. Box 15667
Newport Beach, California 92663

Mr. Albert F. Shelander, Jr.
Vice President of Operations
Traveloc, Inc.
621A Ocean Boulevard
St. Simons Island, Georgia 31522