



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 11, 1992

Mr. Charles E. Griffith, III
Deputy City Attorney
The City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

OR92-199

Dear Mr. Griffith:

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# 15374.

You have received a request for certain information in the possession of the City of Austin (the "city") relating to Sematech, Inc. Specifically, the requestor seeks

[a]ny and all records, reports, permits, data, notes, correspondence, memoranda, inventories of hazardous chemicals or toxic substances kept, stored or used at the SEMATECH facility in Austin, Texas, filed by or on behalf of SEMATECH, Inc., from June, 1988 to present date. This request includes reports of the release or spill of hazardous chemicals, fires or the release of toxic substances into the atmosphere at or from SEMATECH'S facility in Austin, Texas during the time period mentioned. This includes any permits issued to SEMATECH which would permit it to release hazardous chemicals or toxic substances, treated or untreated into the City of Austin sanitary sewer or wastewater system.

You do not object to release of some of the requested information. You claim, however, that certain information submitted to the city by Sematech, Inc., in connection with its application for city permits under the city's Hazardous Materials Storage and Registration Ordinance, would reveal trade secret information and is

thus excepted from required public disclosure by sections 3(a)(1) 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. In response, we have received a letter from Sematech, Inc., which claims that the requested information is excepted from required public disclosure by section 3(a)(10) of the Open Records Act. Sematech claims that the requested information constitutes a trade secret and financial and commercial information that is privileged or confidential.

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. The Texas Supreme Court has adopted the definition of trade secret from the Restatement of Torts, section 757, which holds a trade secret to be

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers.

RESTATEMENT OF TORTS § 757 cmt. b (1939). *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:

- (1) the extent to which the information is known outside of [the company's] business;
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;

- (4) the value of the information to [the company] and to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939). 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. *See* 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 un rebutted 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.

In Open Records Decision No. 554 (1990), this office held that information submitted to the city about plant design and layout and the volume and location of chemicals used by companies pursuant to the city's Hazardous Materials Storage and Registration Ordinance was excepted from required public disclosure by section 3(a)(10) of the Open Records Act as information constituting a trade secret. In addition, the identities of two chemicals were excepted as trade secret information.

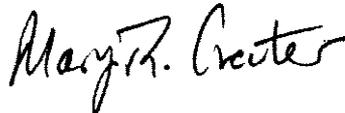
We have examined the documents submitted to us for review. Sematech advises us that it uses numerous chemicals in its development activities and that disclosure of the identities and volumes of chemicals used would alert those knowledgeable in the industry to the direction of Sematech's research activities. Furthermore, it asserts that release of information regarding the proximity of chemicals to tools used in the manufacturing process would reveal trade secret information, thus harming Sematech's competitive interests. Sematech also advises us that information about the amount and type of chemicals it uses is disclosed only on a confidential, need to know basis and that a 24 hour a day, seven day a week security force, together with strategically placed cameras and employee non-disclosure agreements, ensure the secrecy of the requested information. Sematech relates that disclosure of the requested information would reveal its unique methods and achievements and would undermine its competitiveness in the international

semi-conductor industry. The technology developed by Sematech is the result of an investment of hundreds of millions of dollars and the efforts of a broad consortium, including 80 percent of the members of the United States semi-conductor industry and the Department of Defense. Sematech advises us that its technology would be almost impossible to duplicate independently.

After considering these arguments in light of the Restatement's definition of a trade secret, we conclude that Sematech, Inc., has made a *prima facie* case for establishing a trade secret. See Open Records Decisions Nos. 552, 554. Accordingly, you may withhold the requested information pursuant to section 3(a)(10) of the Open Records Act.¹ As we resolve this matter under section 3(a)(10), we need not address the applicability of section 3(a)(1) at this time.

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 OR92-199.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lmm

Ref.: ID# 15374
ID# 15562

¹You do not object to release of an Austin Fire Department incident report (Exhibit D) except for information which identifies a certain chemical used in Sematech's manufacturing process. The identity of a chemical may be considered a trade secret. See Open Records Decision No. 554. We conclude that Sematech has made a *prima facie* case for establishing that the identity of chemicals used in its research activities constitutes a trade secret. Accordingly, the identity of the chemical on the incident report may be withheld from required public disclosure under section 3(a)(10).

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