



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 15, 1992

Ms. Mercedes Leal  
Assistant County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR92-295

Dear Ms. Leal:

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# 15302.

The Harris County Health Department (the "department") has received a request for a computerized "download" of information relating to dogs licensed in Harris County (the county), including, but not limited to, the owner's name and address, and the name, breed, age, sex, and color of the dog. The requested information is made available to the department pursuant to its Rules to Control Rabies, which provide that any veterinarian who is issued a book of registration receipts for the registration of dogs and cats must deliver a copy of each registration issued by him to the county. The requestor has subsequently informed us that she does not seek information which identifies the veterinarian or the veterinary clinic from which the information originated. You claim that the requested 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. Open Records Decision No. 541 (1990). You do not indicate how the requested information relates to a competitive bidding situation or to a commercial transaction to which the city is party. Accordingly, you may not properly invoke the section 3(a)(4) exception.

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. You claim that the requested information constitutes a trade secret.<sup>1</sup> 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.

*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];

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<sup>1</sup>You also claim that the requested information is excepted from required public disclosure under the "commercial or financial information" branch of section 3(a)(10). On the basis of the reasoning in Open Records Decision No. 494 (1983), you assert that the requested information is excepted because its release would either 1) impair the county's ability to obtain the information in the future or 2) cause substantial harm to the competitive position of the person from whom the information was obtained. Past open records decisions issued by this office have relied on federal cases ruling on exemption 4 of the federal Freedom of Information Act (FOIA) in applying section 3(a)(10) to commercial information. *See National Parks & Conservation Ass'n v. Morton*, 498 F2d 765, 770 (D.C. Cir. 1974). However, in Open Records Decision No. 592 (1991), reliance on federal interpretations of exemption 4 of FOIA was reexamined. As a consequence of this reexamination, open records decisions exempting commercial and financial information pursuant to federal interpretations of exemption 4 were overruled. Unless the information requested constitutes trade secrets or is "privileged or confidential" under the common or statutory law of Texas, it cannot be withheld under section 3(a)(10). However, because we conclude that you have made a *prima facie* case that the requested information constitutes a trade secret for purposes of section 3(a)(10), we need not address whether the requested information is "privileged or confidential" under the common or statutory law of Texas.

- (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 [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, including customer lists, constitutes a trade secret; depending on the information being considered, one factor alone may be indication of a trade secret. See Open Records Decision Nos. 552 at 3; 494 (1988), citing *Expo Chemical Co., Inc. v. Brooks*, 572 S.W.2d 8 (Tex. Civ. App.--Houston [1st Dist.] 1978), *rev'd on other grounds*, 576 S.W.2d 369 (Tex. 1979).

You advise us that only the individual veterinarians and the department have access to the requested information. Employees of a veterinarian have access only to incomplete information about their employers' customers. You suggest that efforts to protect the secrecy of this information have not been made in the past only because such measures were not necessary. You assert that the requested information would be valuable to competitors of veterinarians and that competitors would be required to conduct extensive and expensive marketing research in order to replicate the requested information.

We have considered your arguments and examined the documents submitted to us for review. You have demonstrated that the requested information meets the six criteria listed in the Restatement of Torts, *supra*. Accordingly, we conclude that you have made a *prima facie* case for establishing a trade secret and may withhold the requested information pursuant to section 3(a)(10) of the Open Records Act.

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 OR92-295.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/GK/lmm

Ref.: ID# 15302  
ID# 15477  
ID# 16002

cc: Ms. Stephanie Clark  
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