



Office of the Attorney General
State of Texas

August 14, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. David M. Douglas
Assistant Chief of Legal Services
Texas Department of Public Safety
P. O. Box 4087
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OR92-485

Dear Mr. Douglas:

The Texas Department of Public Safety (DPS) asks whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 15939.

The DPS solicited proposals and bids from various consultants to assume responsibility for an emergency management program for the Department of Energy's Pantex nuclear weapons plant near Amarillo, Texas. The contract was awarded to SE Technologies, Inc. DPS has received a request from a competing consulting firm for the SE Technologies' proposal. We have been furnished a copy of the SE Technologies' proposal for our review. DPS and SE Technologies claim that this information is excepted from required public disclosure by Open Records Act sections 3(a)(4) and 3(a)(10).

Open Records Act section 3(a) states that all information in the possession of governmental bodies is public information, with the following relevant exceptions:

- (4) information which, if released, would give advantage to competitors or bidders; [and]
- (10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

Section 3(a)(4) does not apply where the bidding on a contract has been completed and the contract is in effect. Open Records Decision No. 541 (1990);

514, 509 (1988); 405 (1983). Because the contract in the present case has already been awarded, section 3(a)(4) is not applicable.

DPS and SE Technologies claim that the information is excepted from public disclosure as trade secrets pursuant to section 3(a)(10). The Texas Supreme Court has adopted the following definition of trade secret based on Restatement of Torts, section 757: "[A]NY 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." *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 at 2 (1990). The RESTATEMENT lists the following factors that should be considered in determining whether the information constitutes trade secrets:

- (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).

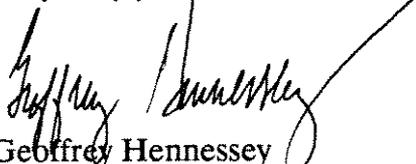
The SE Technologies proposal states that it is based on over ten years of experience designing emergency management preparedness systems for nuclear facilities; you also advise that the information supplied DPS is not widely known outside SE Technologies. The SE Technologies proposal states that it was furnished in confidence to DPS for evaluative purposes only and that DPS would not disclose the proposal to third parties; this confidentiality provision establishes that SE Technologies has taken measures to guard the secrecy of the information. Disclosure of the information would also provide competitors with an unfair advantage by allowing the competitor to mimic or simply copy the SE Technologies proposal and furnish it in future competitive bidding situations. For these reasons,

we conclude that the proposal qualifies as a trade secret and may be withheld pursuant to section 3(a)(10).

We note that annexed to the proposal is a copyrighted article titled "Emergency Planning for Chemical Agent Releases" (Attachment A) and a SE Technologies staff resume (Attachment B). This office has previously ruled that copyrighted material is not excepted from public disclosure by the trade secret doctrine. *See* Open Records Decision No. 180 (1977). This office has also previously ruled that the qualifications and experience of a contractor's personnel do not qualify as trade secrets. *See* Open Records Decision No. 306 (1982). Accordingly, Attachments A and B should be disclosed to the requestor.

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 OR92-485.

Very truly yours,


Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/lmm

Ref.: ID# 15939
ID# 16140

Enclosure: Submitted documents

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