



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 27, 1994

Ms. K. Renée Mauzy
Staff Attorney
Texas Department of Commerce
P.O. Box 12728
Austin, Texas 78711-2728

OR94-218

Dear Ms. Mauzy:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23766.

The Texas Department of Commerce (the "department") received a request for the City of Round Rock's application for Texas Capital Fund money. Your letter states that the application "is actually a joint application by the City of Round Rock and Dell Computer Corporation" (the "corporation"). Included in the application is information about the corporation that the department contends is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. Pursuant to section 552.305 of the Government Code, this office notified the corporation and solicited argument in support of your assertion that the requested information is excepted from public disclosure. We received no response from the corporation.

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information (1) trade secrets, and (2) commercial or financial information that is made confidential by statute or judicial decision. You have submitted to this office for review the part of the proposal that you assert is "trade sensitive information which falls within the definition of a trade secret." In *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert denied*, 358 U.S. 898 (1958), the Texas Supreme Court adopted the Restatement of Torts definition of a trade secret. The following criteria determines if information constitutes a trade secret:

- (1) the extent to which the information is known outside [the owner's business];
- (2) the extent to which it is known by employees and others involved in [the owner's] business;
- (3) the extent of measures taken [by the owner] to guard the secrecy of the information;
- (4) the value of the information to [the owner] and to [its] competitors;
- (5) the amount of effort or money expended by [the owner] 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); *see also* Open Records Decision No. 522 (1989).

This office will accept a claim that information is excepted from disclosure as a trade secret if a prima facie case is made that it is a trade secret, and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 592 (1991). However, the department has not made such a prima facie case, and the corporation has provided no information that would lead this office to believe the information at issue is a trade secret. *See* Open Records Decision No. 402 (1983). Therefore, this information may not be excepted as a trade secret under section 552.110.

You also assert that the information at issue is excepted by section 552.101. Section 552.101 excepts information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." This provision protects common-law privacy interests. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 328 (1982). The document at issue includes the company's financial projections and anticipated expenditures. However, there is no protected common-law privacy interest in financial information about a business. Open Records Decision No. 192 (1978) at 4 (right of privacy protects the feelings of human beings, not property, business, or other monetary interests); *see* Open Records Decision No. 373 (1983) at 3 (privacy interest in financial information relating to an individual). The information at issue is therefore not protected under section 552.101.¹

Since the information at issue is not protected under section 552.101 or 552.110, it 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 contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

¹We note that this information would also not be excepted as commercial or financial information under section 552.110. Commercial or financial information that is confidential under the common-law or statutory law of Texas is excepted under section 552.110. However, the information at issue is not protected by statute. In considering the department's 552.101 assertion this office determined that the information is also not protected under common-law privacy.

RHS/rho

Ref: ID# 23766

Enclosures: Submitted documents

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