



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 28, 1994

Ms. Mary LaDore Mabbitt  
Executive Director  
Montgomery County Emergency  
Communication District  
P.O. Box 1830-A  
Conroe, Texas 77305-9952

OR94-745

Dear Ms. Mabbitt:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26611.

The Montgomery County Emergency Communication District (the "communication district") has received a request for proposals submitted in competition for a contract to perform an emergency communication system feasibility study. You have submitted the requested information to us for review and claim that section 552.110 of the Government Code exempts it from required public disclosure.

Pursuant to section 552.305 of the Government Code, we have notified the parties whose proprietary interests are implicated by this request. We have received a response from Spectrum Resources, Inc. ("Spectrum"), The Warner Group ("Warner"), Concepts to Operations ("CTO"), and RAM/BSE Communications Consultants, L.P. ("RCC"). Although only Spectrum and RCC expressly invoke section 552.110 of the Government Code, all of the respondents claim that their proposals contain proprietary or trade secret information that is not subject to required public disclosure under the Open Records Act.

Section 552.110 protects the property interests of private persons by excepting from required public disclosure trade secrets.<sup>1</sup> The Texas Supreme Court has adopted the

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<sup>1</sup>Section 552.110 also excepts commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. See Open Records Decision No. 592 (1991).

definition of trade secret from section 757 of the Restatement of Torts. *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. Section 757 provides that a trade secret is

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. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management. [Emphasis added.]*

RESTATEMENT OF TORTS § 757 cmt. b (1939). If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a prima facie case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5.<sup>2</sup>

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(Footnote continued)

None of the respondents have cited, nor are we aware of, any statute or judicial decision that makes the requested information privileged or confidential.

<sup>2</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are

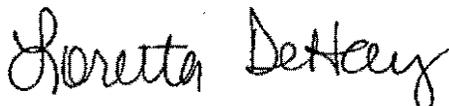
- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information 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); *see also* Open Records Decision Nos. 319 at 2; 306 at 2 (1982); 255 (1980) at 2.

We have examined the arguments submitted to us for review. Spectrum's, Warner's, and CTO's arguments are conclusory and do not make a prima facie case that their proposals contain trade secrets. We conclude, however, that RCC has made a prima facie case that some of the information contained in its proposal constitutes trade secrets. Specifically, RCC has made a prima facie case with respect to sections 2.3, 2.4, 2.7, 3.1, 3.2, 3.3, 3.4, and 6.0 and the Appendix of Sample Maps. We conclude that the communication district must withhold this information under section 552.110 of the Government Code. The remainder of the requested information must be released in its entirety.

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,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/GCK/rho

Ref.: ID# 26611

Enclosures: Submitted documents

cc: Mr. Marcus J. Lockard  
President  
Lockard & White  
14511 Falling Creek, Suite 507  
Houston, Texas 77014  
(w/o enclosures)