



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 30, 1994

Mr. Gilbert D. Douglas
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-311

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 23015.

The City of Houston (the "city") received a request for information concerning responses to a bid proposal for AT&T Information Systems Network Equipment. The city contends that the requested information is excepted from required public disclosure under sections 552.104 and 552.110 of the Government Code.

Section 552.104 excepts "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is designed to protect the interests of the governmental body as in a competitive bidding situation for a contract or benefit. Open Records Decision No. 592 (1991) at 8. It is not designed to protect the interests of private parties submitting information to a governmental body. *Id.* at 8-9. A governmental body must show some actual or specific competitive harm in a particular competitive situation. Open Records Decision No. 541 (1990) at 4. General allegations or remote possibilities that an unknown competitor will gain an unfair advantage are not sufficient to protect information under section 552.104. *Id.* Once the bidding process has ceased and a contract has been awarded, section 552.104 will generally not except information submitted with a bid or the contract itself from disclosure. Open Records Decision No. 514 (1988).

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

The city informed this office on December 1, 1993 that the contract had been awarded. Accordingly, the city may not withhold the requested information under section 552.104. *See id.*

The city also contends that the requested information may be excepted from required public disclosure under section 552.110 as information that may constitute a trade secret. Pursuant to section 552.305 of the act,² the city informed GTE Supply ("GTE"), United Communications Capital Corp. ("United Communications"), Texas Electric Insulated Cable Corp. ("TEICC"), Interactive Communications Concepts, Inc. ("Interactive Communications"), Century Computer Marketing ("Century Computer"), and Telemart Services Ltd. ("Telemart") that an open records request had been made concerning the bid proposals submitted by the companies.

Section 552.110 excepts "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Section 552.110 refers to two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person. In order for information to be excepted from required public disclosure as "commercial or financial information," the information must be privileged or confidential under the common or statutory law of Texas. Open Records Decision No. 592 (1991). Because section 552.110 requires that excepted information be made confidential by statute or judicial decision, it is redundant with section 552.101. We are not aware of any statute that would make the requested information confidential.³ The city may not, therefore, withhold the requested information under the commercial or financial information aspect of section 552.110 of the Government Code.

Section 552.110 may also except information that is considered a trade secret. The Texas Supreme Court has adopted the definition of trade secret from the Restatement of Torts, section 757 (1939). *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). A trade secret

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] 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

²Section 552.305 provides that "[i]n a case in which information is requested under [the Open Records Act] and a third party's privacy or property interests may be involved" the third party "may submit in writing to the attorney general the person's reasons why the information should be withheld." Gov't Code § 552.305(a), (b). "The governmental body may, but is not required to, submit its reasons why the information should be withheld." *Id.* § 552.305(c).

³We note that the right of privacy is designed primarily to protect the feelings and sensibilities of human beings rather than to safeguard property, business, or other pecuniary interests. Open Records Decision No. 192 (1978). Accordingly, the doctrine of common-law privacy does not apply to the records at issue.

process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, 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.

RESTATEMENT OF TORTS § 757 cmt. b (1939). There are six factors listed by the Restatement which should be considered when determining whether information is a trade secret:

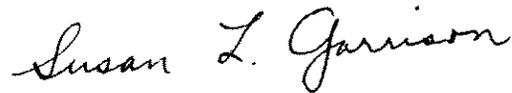
(1) the extent to which the information is known outside of [the company's] business; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information 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.

Id. The governmental body or the company whose records are at issue must make a *prima facie* case for exception as a trade secret under section 552.110. *See Open Records Decision No. 552 (1990) at 5.*

This office has received no response from GTE, United Communications, or Telemart. Accordingly, the city may not withhold the requested information relating to those companies as trade secrets under section 552.110. Although this office received correspondence from Century Computer, TEICC, and Interactive Communications, none of the companies made a *prima facie* case that the information at issue constitutes a trade secret as defined by the Restatement. The city may not, therefore, withhold the requested information relating to those companies as trade secrets under section 552.110 of the Government Code. As the city raises no other exceptions to required public disclosure, the requested information must be released in its entirety to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/LBC/rho

Ref.: ID# 23015

Enclosures: Submitted documents

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