



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 19, 1994

Mr. Bruce Isaacks
Criminal District Attorney
Denton County
110 West Hickory
Denton, Texas 76201

OR94-456

Dear Mr. Isaacks:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 22621.

Denton County (the "county") has received a request for a copy of a proposal submitted by Szabo in response to a request for proposals for the jail food service. You assert that the proposal is excepted from required public disclosure under sections 552.101, 552.104, and 552.110.

Section 552.110 protects trade secrets from required public disclosure. 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 (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 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 out side 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.

Szabo contends that the following portions of its proposal constitute a trade secret: Menu, Financial Plan, Client References, Training, Management Training, Inservice Training Insert, Inmate Vocational Training, Culinary Arts Insert, Training Guide Insert, and Inmate Training and Development. It makes the following showing:

[the information] is known only to a limited number of managerial employees of ARA/Szabo. . . . [O]nly those Denton County officials charged directly with management of the Jail have "full, working knowledge" of the ARA/Szabo Information. . . .

ARA/Szabo has no written nondisclosure policy . . . [but its] practice has been to share the ARA/Szabo Information only [on] a strictly "need-to-know" basis. . . .

If the ARA/Szabo Information is revealed, ARA/Szabo's management has asserted that competitors will be able to deduce [its] costs. In that case, competitors may be able to underbid ARA/Szabo

[A]pproximately 300 manhours were expended by ARA/Szabo in the preparation and submission of the proposal

[T]he ARA/Szabo information cannot be readily duplicated or acquired by others.

With one exception, we conclude that Szabo has established a *prima facie* case that the foregoing portions of its proposal constitute trade secrets, and that its assertions have not been rebutted as a matter of law. *See* Open Records Decision No. 552 at 5. We do not believe, however, that you have demonstrated that the list of client references constitutes a trade secret. Given that all of the listed clients appear to be governmental entities, it seems highly unlikely that knowledge of this information is limited to Szabo employees and local officials with a need to know, nor do you make such an assertion. *Id.* at 3-4. Therefore, with the exception of the list of client references, the aforementioned portions of the proposal must be withheld under section 552.110 of the act. The remainder of the proposal must be released.¹

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/SLG/rho

Ref.: ID# 22621

Enclosures: Submitted documents

cc: Ms. Beverly Tolson
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¹Because we resolve this request under section 552.110, we need not address the other exceptions you raise. The client reference list is not protected under section 552.101 or 552.104. Nor does it appear that either the county or Szabo objects to the release of the remainder of the proposal. Therefore, we do not address whether sections 552.101 and 552.104 would except that information.

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