



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1994

Mr. Gary W. Smith  
City Attorney  
City of Greenville  
2821 Washington  
P.O. Box 1049  
Greenville, Texas 75403-1049

OR94-816

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 26010.

The City of Greenville (the "city") published a request for proposals ("RFP") for the collection, transportation, and disposal of household wastes to be accumulated at a Household Hazardous Waste Collection Event. The city awarded the contract to Laidlaw Environmental Services. Subsequently, the city received a request for "a copy of the awarded bid proposal for the collection, transportation and disposal of household hazardous wastes" the city received in response to the RFP.

You contend that sections 552.101, 552.104, and 552.110 of the Government Code except portions of the requested bid proposal from required public disclosure. We understand that you already have forwarded the remainder of the requested information to the requestor. We will consider your objections in turn.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that the names and resumes of certain Laidlaw personnel, as well as the names of persons, listed on certificates of training, who have completed particular training courses, are confidential by judicial decision, *i.e.*, under the common law. The Texas Supreme Court, in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), articulated a two-pronged test that we use to determine whether information is

confidential under the doctrine of common-law privacy and therefore exempt from required public disclosure under section 552.101. Under the test, information is confidential if (1) it contains highly intimate or embarrassing facts about an individual's private affairs such that the release of the information would be highly offensive to a reasonable person and (2) the public has no legitimate interest in it. *Industrial Found.*, 540 S.W.2d at 685.

The fact that an individual works for a particular company is not an intimate or embarrassing fact about the individual's private affairs. Likewise, the fact that an individual has completed a training course is not an intimate or embarrassing fact about the individual's private affairs. Moreover, Laidlaw proposed to assign the employees whose names, resumes, and certificates of training you wish to keep secret to work on a project for the city. Thus, we believe the public has a legitimate interest in the employees' names, resumes, and certificates of training. Section 552.101 does not authorize the city to withhold the requested information.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Section 552.104 protects the government's interest in purchasing by ensuring that the bidding process will be truly competitive. See Open Records Decision Nos. 583, at 4, 554, at 3 (1990). Section 552.104 is not designed to protect the interest of private parties submitting information to the government. Open Records Decision No. 592 (1991) at 8. Furthermore, section 552.104 requires the governmental body claiming it to show some specific actual or potential harm in a particular competitive situation. See Open Records Decision Nos. 593 (1991) at 2; 541 (1990) at 4. Finally, section 552.104 is inapplicable when the bidding on a contract has been completed and the contract is in effect. E.g., Open Records Decision Nos. 541, at 5; 514 (1988) at 2; 319 (1982) at 3.

We understand that the city has completed the bidding process and awarded the contract to Laidlaw Environmental Services. Accordingly, section 552.104 is inapplicable and does not authorize the city to withhold the information from required public disclosure.

Finally, you believe that portions of the proposal listing the Laidlaw employees who will be assigned to the city's project, information regarding Laidlaw's training program, and specific pieces of information--one entitled "Collection Event Activities," one entitled "Pre-Collection Activities," one entitled "Schedule of Fees," and other information relating to the use of cubic yard boxes--all contain trade secret information that the city may withhold pursuant to section 552.110. Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Because you present arguments only with regard to the trade secret branch of section 552.110, we need not consider whether the requested information is commercial or financial information that the city may withhold.

The Texas Supreme Court has adopted the 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, . . . [but] 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.<sup>1</sup>

RESTATEMENT OF TORTS § 757 cmt. b (1939) (footnote added).

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 that the information is a trade secret if the person establishes a prima facie case for the exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552, at 5. On the other hand, when an agency or company does not provide relevant information regarding factors necessary to make a claim under section 552.110, a governmental body has no basis for withholding the information under section 552.110. *See* Open Records Decision No. 402 (1983) at 2.

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<sup>1</sup>The Restatement lists six factors we must consider when determining whether particular information is a trade secret:

(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 [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.

Consistent with section 552.305 of the Government Code, we have notified a representative of Laidlaw Environmental Services of the request for information and invited him to submit arguments as to why the requested information should be withheld or released. Laidlaw did not respond. Accordingly, the city has no basis for withholding the information under section 552.110. We therefore conclude that the city must release the requested information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



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Assistant Attorney General  
Open Government Section

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Ref.: ID# 26010

Enclosures: Submitted documents

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