



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 8, 1995

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Office of the Comptroller of Public Accounts
L.B.J. State Office Building
111 East 17th Street
Austin, Texas 78774

OR95-351

Dear Ms. Joseph:

You ask whether 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# 23687.

The Office of the Comptroller of Public Accounts (the "comptroller") has received an open records request for "access to all bids submitted by all vendors bidding on the operation of the Comptroller of Public Accounts' printing facilities." You acknowledge that, as a general rule, bids are public records and should be disclosed after the contracts are awarded. Still, you speculate that a portion of the requested material "may be excepted under Section 552.101" or section 552.110. The information in question here consists of a section of a bid document describing the labor practices of a company, which details the company's past employment difficulties and which was marked "We request confidentiality on this section." Apparently, that statement on the bid document has caused both your office and the company to believe that portion might be withheld under the Open Records Act. This office has said that the "mere expectation of confidentiality by the individual supplying the information is not enough to satisfy the 'by statute or judicial decision' requirement of section [552.110]" or section 552.101. Open Records Decision No. 203 (1978).

Pursuant to section 552.305 of the Government Code, we have notified Hart Forms, the third party whose interests are implicated by this request for information. Hart Forms claims that the item in question is protected from public disclosure by sections 552.101, 552.104, and 552.110 of the Government Code. While Hart claims that the portion of the bid document is protected from disclosure under those sections of

the act, the company has identified no cases, statutes, or common-law principles that would make the information confidential under section 552.101 or the commercial and financial information branch of 552.110. *See* Open Records Decision No. 592 (1991) at 7-8. Neither have we located any authority that would except this item from required public disclosure.

Section 552.110 also protects the property interests of private persons by excepting from required public disclosure trade secrets, as defined by the Texas Supreme Court in *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. The *Huffines* court adopted the definition of trade secret as established in the Restatement of Torts, which reads in part as follows:

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. . . .

Huffines, 314 S.W.2d at 776 (quoting RESTATEMENT OF TORTS § 757 cmt. b (1939)). The information at issue here does not even remotely resemble the kind of information that can be a trade secret. Moreover, Hart Forms has not made a prima facie showing that the information is a trade secret. *See* Open Records Decision No. 552 (1990) at 5.

Finally, in regard to Hart's claim that section 552.104 protects this information, section 552.104 may only be claimed by a governmental body to protect its interests and may not be raised by private parties. *Open Records Decision No. 592 (1991) at 8.* Because the comptroller's office does not claim section 552.104 to protect its interests and none of the other exceptions apply, you 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 should 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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

Ref.: ID# 23687

Enclosure: Submitted document

cc: Ms. Lynn McCray
Organizing Coordinator
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(w/o enclosure)