



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 11, 1995

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

OR95-547

Dear Mr. Toscano:

You have asked this office to determine 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# 24423.

The City of Dallas (the "city") received a request for copies of the correspondence between the city and private developers about projects to renovate downtown buildings into residential units. You submitted several project proposals as responsive to the request. You contend that information in the proposals is protected from disclosure under sections 552.101 and 552.104 of the Open Records Act.<sup>1</sup> You indicate that the Kirby project proposal was submitted for the dual purpose of seeking a tax abatement and in response to the city's Intown Housing Program request for qualifications and proposals. You indicate that the Cotton Exchange project proposal was submitted as a request for a tax abatement. The Santa Fe proposal was submitted in response to the city's request for qualifications and proposals. We will consider your arguments concerning the Kirby, Cotton Exchange, and Santa Fe documents.

You contend that section 552.104 protects portions of the Kirby and Santa Fe proposals, since these were submitted in response to the city's request for proposals. Section 552.104 protects information that "would give advantage to a competitor or bidder." You have stated:

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<sup>1</sup>We assume that the portions of the submitted documents that you paperclipped are the sections you seek to protect from disclosure.

If this information is released, the developers' competitors could ascertain the financial sources and capabilities of the respondents as well as the details of their projects and then use this information to undercut them in this proposal as well as in future competitive situations.

You have informed this office that the contract has not yet been awarded, but we note that the section 552.104 exception is applicable only until a contract is awarded. Open Records Decision Nos. 541 (1990) at 5, 514 (1988) at 2, 75 (1975). The sections of the Santa Fe proposals you seek to withhold are the project description and summary, information about the investors, and the site plans. We agree that this is the type of information that might give advantage to a competitor and may be withheld under section 552.104. We have also marked the sections of the Kirby proposal which may be withheld under section 552.104.

You assert that since the Kirby and the Cotton Exchange proposals were submitted as requests for tax abatements these proposals are protected by section 552.101. Section 552.101 protects information that is "confidential by law, either constitutional, statutory, or by judicial decision." You refer to section 312.003 of the Property Redevelopment and Tax Abatement Act, Tax Code chapter 312, which states:

Information that is provided to a taxing unit in connection with an application or request for tax abatement under this chapter and that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which tax abatement is sought is confidential and not subject to public disclosure until the tax abatement agreement is executed. That information in the custody of a taxing unit after the agreement is executed is not confidential under this section.

Tax Code § 312.003. Information is confidential under this provision until the abatement is granted, as long as it is provided in connection with a request for abatement and the information provided describes the equipment or property which will be located on the property or the "specific processes or business activities to be conducted." *Id.* Since the information in the Kirby project is already protected from disclosure under section 552.104, we will address only the information in the Cotton Exchange project.

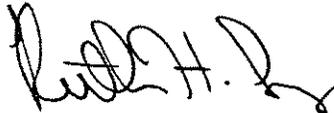
You have informed this office that the Cotton Exchange building has been demolished. Tax abatement is thus no longer sought for this project. You assert, however, that the project information is confidential under section 312.003 since the company's ideas for the Cotton Exchange project may be applicable to other projects. Section 312.003 provides that information is confidential only as it relates to the specific processes or business activities that were to be conducted or the equipment and property that were to be located on the property. You have provided no information to show that the specific processes and business activities identified in the project are applicable to another project for which tax abatement is sought.

Pursuant to section 552.305 of the Open Records Act, this office also provided the Cotton Exchange developer the opportunity to submit reasons as to why the information at issue should be withheld. However, the company did not submit any reasons as to why the information at issue should be withheld. Section 552.110 protects the property interests of private persons by excepting from required public disclosure trade secrets and commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision No. 592 (1991) at 2. This office must accept a claim that information is excepted as a trade secret if a *prima facie* case for exception is made and no argument is submitted that rebuts the claim as a matter of law. *Id.* However, when a governmental body or company fails to provide evidence of the factors necessary to establish a trade secret claim, this office cannot conclude that the trade secret prong of section 552.110 applies. Open Records Decision No. 402 (1983).

Since the Cotton Exchange building no longer exists, and neither the city nor the Cotton Exchange project developer provided information to show that the information at issue is confidential, the Cotton Exchange project information must be released.

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,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/JET/rho

Ref.: ID# 24423

Enclosures: Marked documents

cc: Ms. Miriam Rozen  
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(w/o enclosures)